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THE LANGUAGE OF HARM: WHAT THE
NASSAR VICTIM IMPACT STATEMENTS REVEAL
ABOUT ABUSE AND ACCOUNTABILITY

Jamie R. Abrams and Dr. Amanda Potts

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THE LANGUAGE OF HARM: WHAT THE NASSAR VICTIM IMPACT STATEMENTS REVEAL ABOUT ABUSE AND ACCOUNTABILITY

Jamie R. Abrams* and Dr. Amanda Potts**

ABSTRACT

This Article examines 148 Victim Impact Statements that were delivered to the court in the Larry Nassar criminal sentencing. Larry Nassar was a doctor for the United States Gymnastics Association and an employee of Michigan State University who treated elite athletes, predominantly gymnasts. Nassar pleaded guilty to child pornography and first-degree criminal sexual misconduct charges in Michigan. His sentencing received worldwide attention as victims delivered impact statements describing the harm and betrayal of his conduct. Using corpus-based discourse analysis, this Article examines the complex strategies that the victims deployed to describe who Nassar was (a doctor, a monster, a friend), what he did (abuse, assault, pedophilia, “treatments”), and the harms that they suffered (pain, hurt, betrayal). It concludes by recommending more robust and holistic approaches to the naming and framing of sexual assault, more proactive policy uses of Victim Impact Statements in shaping systemic reforms, and greater law reforms to prevent systemic institutional sexual assault.

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INTRODUCTION

This Article comprehensively studies 148 Victim Impact Statements (VIS) that were delivered in the criminal sentencing of Larry Nassar for criminal sexual conduct. This collection of VIS offers a uniquely comprehensive portal into the language of harms in sexual abuse. VIS are public statements, offering accessible insights into the ways in which victims authentically describe their experiences to others.¹ VIS sit sequentially after the criminal trial is over, liberating them from the rigor of burdens of proof, the structure of legal elements, and the limits of adversarial questioning.² Victims can freely describe what happened to them, how they understand the conduct, how they view the perpetrator, and how they experienced the harms.³ VIS give victims⁴ a platform to voice their needs, some of which might be addressed by sentencing, but many of which will not.⁵

Using discourse analysis methodologies, this Article examines the VIS that were made in Nassar's criminal sexual misconduct case in Ingham County, Michigan. Larry Nassar was an elite sports doctor, treating athletes—mostly gymnasts—affiliated with both Michigan State University (MSU) and USA Gymnastics (USAG).⁶ Nassar pleaded guilty in federal court to child pornography⁷ and to first-degree criminal sexual misconduct charges in both Ingham and Eaton counties.⁸ He was ultimately sentenced to 60 years in prison for the child

¹ Paul G. Cassell, *In Defense of Victim Impact Statements*, 6 OHIO ST. J. CRIM. L. 611, 623–24 (2009).

² See, e.g., *United States v. Clark*, 335 F. App'x 181, 182–84 (3d Cir. 2009).

³ Cassell, *supra* note 1, at 621–24.

⁴ It was a complex matter for us to select the appropriate language usage in referring to those who testified in the Nassar case. We have elected to use the word “victim” here because that is the most legally accurate to the analysis of *victim* impact statements. While in some instances, the term “survivor” might be more appropriate to subjectively articulate the lived experiences of these witnesses, that was not the term used in the Nassar case. Our study here is focused on the use of language in these victim impact statements, so we remain authentic to the use of the word “victim” in this Article. These women are surely survivors as well. We do not use “victim” to define them by their victimhood, but rather to maintain authenticity to the study. Where possible, identifying names are used instead.

⁵ Cassell, *supra* note 1, at 624.

⁶ Matt Mencarini, *Nassar Pleads Guilty to Federal Child Porn Charges*, LANSING ST. J. (July 11, 2017, 1:11 PM), <https://www.lansingstatejournal.com/story/news/local/2017/07/11/larry-nassar-child-porn-guilty-plea/463796001/>.

⁷ *Id.*

⁸ Matt Mencarini, *Larry Nassar Makes 7 Guilty Pleas, Victim Calls Him 'Master Manipulator'*, LANSING ST. J. (Nov. 22, 2017, 10:51 AM), <http://lansingstatejournal.com/story/news/local/2017/11/22/nassar-pleads-guilty-7-counts-first-degree-criminal-sexual-conduct/884166001/>; Matt Mencarini, *Nassar Pleads*

pornography charges⁹ and 40 to 175 years for the criminal sexual misconduct charges.¹⁰ This confluence of cases presented an incredibly rare courtroom episode in which 204 victim impact statements were delivered over nine days and two counties in Larry Nassar's sentencing.¹¹

This Article analyzes the substance of the Nassar collection of VIS in the Michigan criminal sexual misconduct proceeding to reveal their larger relevance to law and society. It critically examines the multi-pronged goals that VIS are supposed to achieve. It questions whether the VIS offered in the Nassar case adhered to or deviated from the goals of VIS in criminal proceedings. This research offers critical insights into the unique complexities and challenges of VIS in sexual assault and sexual abuse cases.¹²

The Nassar VIS came in the context of a high-impact, high-profile trial and, accordingly, led to many reforms and institutional changes. VIS are generally limited to chronicling the nature and extent of harm and advising on sentencing length.¹³ In the Nassar case, though, whether he would be sentenced to prison time was a moot question because he had already pleaded guilty to certain charges and been convicted on other charges as well.¹⁴ Further aberrant was the actual layout of the court. VIS are ordinarily delivered *to the court* with the defendant sitting at the defendant table,

Guilty to 3 More Sexual Assault Charges, LANSING ST. J. (Nov. 29, 2017, 8:52 AM), <https://www.lansingstatejournal.com/story/news/local/2017/11/29/larry-nassar-sexual-assault-guilty/897950001/>.

⁹ Justin A. Hinkley & Beth LeBlanc, *Larry Nassar Sentenced to 60 Years in Federal Child Pornography Case*, LANSING ST. J. (Dec. 7, 2017, 11:53 AM), <https://www.lansingstatejournal.com/story/news/local/2017/12/07/larry-nassar-sentenced-60-years-federal-child-pornography-case/908838001/>.

¹⁰ Matt Mencarini, *'Just Signed Your Death Warrant': Larry Nassar Sentenced to 40 to 175 Years*, LANSING ST. J. (Jan. 24, 2018, 12:18 PM), <https://www.lansingstatejournal.com/story/news/local/2018/01/24/larry-nassar-makes-apology-before-sentence/1060107001/>.

¹¹ See, e.g., Sarah Rahal & Kim Kozlowski, *204 Impact Statements, 9 Days, 2 Counties, a Life Sentence for Larry Nassar*, DET. NEWS (Feb. 8, 2018, 5:07 PM), <https://www.detroitnews.com/story/news/local/michigan/2018/02/08/204-impact-statements-9-days-2-counties-life-sentence-larry-nassar/1066335001/> (noting that some of the statements were read through letters, others were delivered in person, and some were delivered remotely).

¹² See Brian A. Eiler, Rosemary Al-Kire, Patrick C. Doyle & Heidi A. Wayment, *Power and Trust Dynamics of Sexual Violence: A Textual Analysis of Nassar Victim Impact Statements and #MeToo Disclosures on Twitter*, 13 J. CLINICAL SPORTS PSYCHOLOGY 290, 304 (2019) (conducting a textual analysis of the VIS and concluding that the "results have important implications for the development of new policies and procedures for early detection and prevention of sexual violence in sports").

¹³ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

¹⁴ Hinkley & LeBlanc, *supra* note 9.

parallel to the victim.¹⁵ Nassar, however, was directed by the judge to sit in the witness box across from the victims.¹⁶ The victims stood in front of the world on a powerful platform and faced Nassar directly, knowing that he would likely spend the rest of his life in jail.¹⁷ This platform was constructed for these victims to share their stories and they seized this opportunity.

With their liberated platform, the victims explicitly named the systemic power structures—in many cases directly by name, such as USAG and MSU—that they believed had enabled and defended the abuse.¹⁸ The liability of these entities had no relevance to the Nassar criminal case itself, but great relevance to enabling the decades of harms that the victims described to the court.¹⁹ The VIS boldly and unequivocally challenged institutions and power structures and pleaded for systemic accountability.²⁰

This case and these VIS were in many ways a watershed moment in the #MeToo movement and in sexual abuse accountability. The VIS offer a critical moment for reflection, analysis, insight, and discourse. This Article begins this pursuit by examining the language of harm (and its limits) and the power structures that allow systemic institutional abuses to occur.

The VIS also reveal the incredible complexities of language in matters of sexual assault and sexual abuse. Words like “rape,” “sexual assault,” and “child abuse” do not squarely fit the conduct that the VIS describe when victims are liberated to speak in their authentic voices.²¹ In real-time, the athletes processed Nassar’s criminal

¹⁵ See Tracy Connor, *Larry Nassar Complains it's Too Hard to Listen to Victim Stories*, NBC NEWS (Jan. 18, 2018, 10:28 AM), <https://www.nbcnews.com/news/us-news/larry-nassar-complains-it-s-too-hard-listen-victim-stories-n838731>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Erin L. Sheley, *Tort Answers to the Problem of Corporate Criminal Mens Rea*, 97 N.C. L. REV. 773, 805 (2019) [hereinafter *Tort Answers*] (“While these impact statements were intended to be directed to Nassar himself, the victims appeared to find it almost impossible to navigate their shared trauma from the sexual assault without addressing his organizational employers directly. Nassar had power, not due to any intrinsic property, but due to his identity as an agent of USA gymnastics and MSU—the organizations upon which these girls and women perceived their athletic futures to rest.”).

¹⁹ This was a criminal case brought by the state of Michigan against Larry Nassar. No other entities were parties to this criminal case.

²⁰ Rahal & Kozlowski, *supra* note 11.

²¹ See *infra* Section IV.B.

conduct through the lens of medical “treatments,” which they only gradually came to understand—in some cases as late as during the criminal trial itself—as sexual abuse and assault.²² The experiences of survivors struggling to put criminal conduct into pre-existing “boxes” that are dominated by narrow social and cultural narratives compromises reporting and undermines existing victim support models.²³

Verbalizing the severity of Nassar’s harms was uniquely complicated when it was, paradoxically, debilitating injuries and pain that *led* the athletes to Nassar’s office for treatment in the first instance.²⁴ Nassar’s conduct involved coercive trust-building with the girls as he played a “God-like” role purportedly preparing them for elite competition.²⁵ The victims continue to personalize the defendant as “Larry” when speaking about him in the past, even as they depict him as “sick,” a “monster,” and “evil” in the present.²⁶ The VIS reveal the limits of language seeking to prevent and intervene in sexual assault *before* 204 victims are standing before the court in solidarity.

With the broad public platform, great “sisterhood” and “solidarity” emerged among the victims for all that they endured.²⁷ That “sisterhood” is not framed, though, to necessarily extend inclusively to other sites of systemic institutional sexual assault, such as in detention facilities, military service, fraternities, sports, and incarceration. The lessons learned from Nassar’s conduct and the victim accounts of it, however, do have sweeping resonance to many other institutional settings.²⁸

This Article first introduces the significance and critiques of VIS in criminal justice proceedings. While this Article does not take a normative position on the merits or complexities of VIS within the criminal justice system, it acknowledges the complexity of the debate in which VIS, such as those in the Nassar case, are situated. It then describes the Nassar case and the role of VIS in these cases particularly. It analyzes the collection (or corpus) of VIS in four key ways. It examines how the victims name themselves and the defendant, how the victims

²² See *infra* Section IV.B.2.

²³ See, e.g., Jamie R. Abrams, *The #MeToo Movement: An Invitation for Feminist Critique of Rape Crisis Framing*, 52 U. RICH. L. REV. 749 (2018) (critiquing the “crisis” model framing rape and sexual assault).

²⁴ See Rahal & Kozlowski, *supra* note 11.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Sonia Moghe, *How Nassar’s Abuse Victims Became a Sisterhood of Survivors*, CNN (Jan. 24, 2018, 11:05 PM), <https://www.cnn.com/2018/01/24/us/nassar-abuse-victims-sisterhood/index.html>.

²⁸ See *infra* Part V.

describe the conduct that occurred, how they articulate the harms they suffered, and how they weigh in on sentencing recommendations.

This Article concludes with several calls to action. VIS's narrow focus on physical damage, psychological harm, and emotional harm shield power structures from accountability for these crimes and belie the enduring complexity of harms. The Nassar case shows victims re-narrativizing the prosecution's presentation of evidence to align with their terminology and the structure of their stories. This Article ultimately reveals how powerful systemic victim-centered platforms can be to law reform agendas, how divergent the language of law and the language of harms can be, and how limited our preventative approaches and interventions are to systemic institutional harms.

I. VICTIM IMPACT STATEMENTS IN CONTEXT

This Article uses VIS as a tool to analyze the language of harm and what it tells us about abuse and accountability. This section situates VIS in context and previews their unique role in the Nassar case. This project is not a normative project about VIS. Rather, it is a linguistic study of abuse and accountability using VIS as a *vehicle* to study language.

Beginning in the 1960s, advocates challenged the criminal justice system for not balancing the rights of victims with the rights of defendants.²⁹ In response, states enacted legal reforms such as victim restitution awards and victim notification laws.³⁰ Congress further passed the federal Victim and Witness Protection Act of 1982 to “enhance and protect the necessary role of crime victims and witnesses in the criminal justice system,” including VIS in the sentencing process.³¹ While VIS are now admissible at some point in the sentencing process in all U.S. states,³² VIS are quite under-utilized. One study of the role of VIS in California, for example, concluded that they were only used in under 3% of felony matters.³³ This context

²⁹ Carrie L. Mulholland, Note, *Sentencing Criminals: The Constitutionality of Victim Impact Statements*, 60 MO. L. REV. 731, 734 (1995).

³⁰ *Id.*

³¹ Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, § 2(b)(1), 96 Stat. 1248, 1248–49.

³² *Victim Impact Statements*, NAT'L CTR. FOR VICTIMS OF CRIME, <http://members.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-impact-statements> (last visited Nov. 1, 2020).

³³ Dina R. Hellerstein, *The Victim Impact Statement: Reform or Reprisal*, 27 AM. CRIM. L. REV. 391, 399–400 (1989).

underscores the significance of the widespread and public use of VIS in the Nassar criminal trial.

VIS in criminal proceedings are situated within the larger complexity of the victim's role in the criminal justice system. Criminal charges are brought on behalf of the state, not the victim directly. A victim might separately testify about the facts of the case as a witness.³⁴ In this witness testimony, victims are, importantly, subject to rigorous cross-examination by defense counsel. VIS, in contrast, are delivered after the state's case has led to a dispositive conviction or plea.³⁵ VIS can be spoken or written³⁶ and are intended to inform the court's imposition of an appropriate sentence by presenting victims' physical, emotional, and psychological harms.³⁷

There are, however, deeply conflicting views about the value and role of VIS in criminal proceedings. VIS have been "lauded as a means of empowerment, decried as a vehicle for unrestrained vengeance, defended in the interests of truth, healing, and reconciliation, and lambasted as irrelevant to the very purposes of punishment."³⁸ Debates particularly focus on their effectiveness and their subjectively punitive effects on defendants.³⁹

Supporters assert that VIS can increase the victim's input into the court's decision, acknowledge the victim's dignity and status as a party to the proceeding, promote fairness, and encourage accurate sentencing.⁴⁰ VIS can also help victims

³⁴ See Amanda Konradi, "I Don't Have to be Afraid of You": Rape Survivors' Emotion Management in Court, 22 SYMBOLIC INTERACTION 45, 52–53 (1999) (chronicling the emotional responses of victims testifying in direct and cross-examination testimony).

³⁵ See, e.g., Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, § 2(b)(1), 96 Stat. 1248, 1248–49.

³⁶ *Id.*

³⁷ Hellerstein, *supra* note 33, at 399.

³⁸ Erin Sheley, *Reverberations of the Victim's "Voice": Victim Impact Statements and the Cultural Project of Punishment*, 87 IND. L.J. 1247, 1247 (2012) [hereinafter *Reverberations*].

³⁹ Anthony Pemberton & Sandra Reynaers, *The Controversial Nature of Victim Participation*, in THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE 229, 231 (Edna Erez, Michael Kilchling & Jo-Anne Wemmers eds., 2011).

⁴⁰ Edna Erez & Kathy Laster, *Neutralizing Victim Reform: Legal Professionals' Perspectives on Victims and Impact Statements*, 45 CRIME & DELINQ. 530, 530–31 (1999).

heal and help defendants accept responsibility for the consequences of the crime.⁴¹ The *Nassar* case revealed how VIS can bring dignity and healing to victims.

There are reasons to worry, however, that VIS undermine fairness and create a systemic tilt toward victims at the expense of defendants' rights, exacerbating sentencing disparities. Critics assert that VIS "undermine . . . certainty and uniformity in sentencing" and "substitute the objective legal assessment of harms . . . with subjective evaluations of seriousness by victims."⁴² Advocates worry that VIS "misplac[e] the jury's attention on the victim, instead of the defendant, at the sentencing stage."⁴³ This, in turn, might lead to harsher sentences.⁴⁴ More cynical views see VIS as politically motivated and gimmicky,⁴⁵ with one judge harshly concluding that VIS are "a political thing to appease the feminist lobby in rape cases. . . . I never bother to read them."⁴⁶ VIS are also critiqued for unduly prolonging the criminal proceedings and creating a trial within a trial.⁴⁷ The *Nassar* VIS did undoubtedly shift attention to the victims and to their harms consistent with these critiques.

There are also questions about the effectiveness of VIS. Because many criminal justice system professionals work with certain cases regularly, "normalization" of harms can lead practitioners to assume knowledge of experiences described in VIS: "They come to know, and even anticipate, the harm that rape victims routinely suffer."⁴⁸ Despite the individual nature of victim harms, critics worry that "VIS simply formalize[] the preexisting consideration of the harm that was likely to have been suffered by a reasonable victim."⁴⁹ This suggests to some that VIS are "redundant and unnecessary," thus defeating some VIS goals.⁵⁰ Others argue that

⁴¹ Cassell, *supra* note 1, at 611–12 (describing the arguments for and against VIS and concluding that VIS "promote justice without interfering with any legitimate interests of criminal defendants").

⁴² *Id.*

⁴³ Mulholland, *supra* note 29, at 732.

⁴⁴ Pemberton & Reynaers, *supra* note 39, at 233.

⁴⁵ Erez & Laster, *supra* note 40, at 537, 545 ("The true intent of [victim impact statements] was political; it was used to gain public support, win an election, and appease powerful victim lobby groups.").

⁴⁶ *Id.* at 537.

⁴⁷ *Id.* at 533.

⁴⁸ *Id.* at 540.

⁴⁹ *Id.* at 541.

⁵⁰ *Id.* at 542.

VIS have not achieved their intended transformations and have not affected the processes or outcomes in meaningful ways.⁵¹

When VIS are given in a rape or sexual assault trial like the Nassar case, delivery itself can be especially difficult. Interviews with rape survivors who testified in criminal proceedings describe the testimony as an intense and emotional experience.⁵² These emotions can include “extreme fear, anger, embarrassment, frustration, anxiety, or unspecified pain,”⁵³ stemming from recalling the event itself, the presence of the defendant, the public audience, and observing “the pain of supporters.”⁵⁴ Managing emotion can thus be a notable component of VIS.⁵⁵ These emotions and intensities were surely present in the Nassar VIS delivery.

Several highly publicized sexual assault sentencings brought VIS to a modern flash point, setting the stage for the importance of the VIS in the Nassar case. The first instance was the sentencing of Brock Turner, a Stanford University swimmer.⁵⁶ Brock Turner’s rape sentencing sparked national outrage when he was sentenced to six months (while facing up to fourteen years) because of the judge’s reflections on Turner’s “promising future.”⁵⁷ The VIS was published by BuzzFeed and viewed 11 million times in just the first four days.⁵⁸ This sentence, and the underlying VIS, captured worldwide attention and revealed “a curious trend of granting leniency to young, privileged, white rapists.”⁵⁹ Judge Persky was ultimately removed from office

⁵¹ *Id.* at 532.

⁵² Konradi, *supra* note 34, at 39.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Corey Rayburn, *To Catch a Sex Thief: The Burden of Performance in Rape and Sexual Assault Trials*, 15 COLUM. J. GENDER & L. 437, 440 (2006) (“Rape law reform must be fundamentally reoriented to address the problematics of performance and language that determine the outcomes of rape and sexual assault trials.”).

⁵⁶ See Steven J. Harper, *Stanford, Trump and the Culture that Marginalizes Rape*, AM. LAW. (Sept. 16, 2016), <https://www.law.com/americanlawyer/almID/1202767624252/>.

⁵⁷ *Id.*

⁵⁸ Katie J.M. Baker, *Here’s the Powerful Letter the Stanford Victim Read to Her Attacker*, BUZZFEED NEWS (June 3, 2016, 4:17 PM), <https://www.buzzfeednews.com/article/katiejmbaker/heres-the-powerful-letter-the-stanford-victim-read-to-her-ra>. She has since published a memoir account of her experience. CHANEL MILLER, *KNOW MY NAME* (2019).

⁵⁹ Kathleen Tierney, Comment, *The “Leniency Epidemic”: A Study of Leniency Granted to Convicted Rapists in America and Australia*, 6 PENN. ST. J.L. & INT’L AFF. 342, 344 (2018).

by voters for the Turner sentencing.⁶⁰ Two 2016 cases also captured national attention. David Becker received two years of probation after being accused of sexually assaulting two sleeping women at a house party.⁶¹ Austin Wilkerson received a two-year sentence with work release after conviction for rape.⁶² These cases and others like them brought questions of accountability, bias, and fairness in rape and sexual assault sentencing into the national spotlight.⁶³

It was against this backdrop that the Larry Nassar trial made international headlines for, among other things, its utilization of VIS.⁶⁴ The VIS that are the subject of study here gave the victims a community and solidarity that the legal system before had not. They had a freedom of language and voice that the trial did not provide. The women had an audience far beyond the judge and defendant. The VIS also came at a transformative time in the #MeToo Movement, rendering them worthy of study and uniquely impactful in conversations surrounding legal reform.

Larry Nassar was sentenced in Michigan. Michigan victims have a constitutional right to “make a statement to the court at sentencing.”⁶⁵ This right was codified to grant victims “the right to appear and make an oral impact statement at the sentencing of the defendant.”⁶⁶ The content of this statement may include, but is not limited to the following:

- (a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.

⁶⁰ *Stanford Sex Attack: Judge Aaron Persky Removed from Office*, BBC (June 6, 2018), <https://www.bbc.com/news/world-us-canada-44383329> (noting that the last judge to be removed by recall effort was in 1977).

⁶¹ Tierney, *supra* note 59, at 346.

⁶² *Id.* at 348–49.

⁶³ See, e.g., Kristen Lombardi, *Obama Moves to Address Campus Sex Assault Issues Raised by Center Series*, CTR. FOR PUB. INTEGRITY (Feb. 24, 2010), <https://publicintegrity.org/education/obama-moves-to-address-campus-sex-assault-issues-raised-by-center-series/> (studying the outcomes of sexual assaults reported and adjudicated on college campuses).

⁶⁴ See generally Rahal & Kozlowski, *supra* note 11.

⁶⁵ MICH. CONST. art. I, § 24(1).

⁶⁶ MICH. COMP. LAW ANN. § 780.765(1) (West 2020) (noting that the victim may also designate a proxy if she is “physically or emotionally unable to make the oral impact statement”); see also MICH. COMP. LAWS ANN. § 780.764 (West 2020) (“The victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant”).

- (b) An explanation of the extent of any economic loss or property damage suffered by the victim.
- (c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.
- (d) The victim's recommendation for an appropriate sentence.⁶⁷

This section has introduced the general purpose, structure, and context of VIS more broadly. This background serves as a structural and organizational tool to conduct a linguistic analysis of the VIS to extract lessons in law, language, and policy. The next section introduces the Nassar trial proceedings as context for the VIS discourse analysis that follows.

II. LARRY NASSAR TRIALS

On September 12, 2016, the *Indianapolis Star* published detailed accounts of Larry Nassar's abuse of athletes in his position as team physician for the USAG.⁶⁸ This reporting set off a barrage of claims and proceedings against many entities and individuals.⁶⁹ For Nassar, a string of criminal, civil, administrative, and licensing proceedings followed.⁷⁰ On July 11, 2017, Nassar pleaded guilty to federal charges

⁶⁷ § 780.763(3)(a)–(d). Note that this law, known as the William Van Regenmorter Crime Victim's Rights Act, is not exclusive to sexual crimes. It covers any "violation of a penal law of [Michigan] for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony." § 780.752(1)(b) (defining "Crime" under the statute).

⁶⁸ Tim Evans, Mark Alesia & Marisa Kwiatkowski, *Former USA Gymnastics Doctor Accused of Abuse*, INDYSTAR (Jan. 24, 2018, 4:35 PM), <https://www.indystar.com/story/news/2016/09/12/former-usa-gymnastics-doctor-accused-abuse/89995734/>.

⁶⁹ *Id.*

⁷⁰ See, e.g., James Dator, *A Comprehensive Timeline of the Larry Nassar Case*, SB NATION (July 31, 2019, 1:24 PM), <https://www.sbnation.com/2018/1/19/16900674/larry-nassar-abuse-timeline-usa-gymnastics-michigan-state>; see generally Katherine Hampel, Comment, *Whose Fault is it Anyway?: How Sexual Abuse Has Plagued the United States Olympic Movement and its Athletes*, 29 MARQ. SPORTS L. REV. 547 (2019) (summarizing the allegations against Nassar, the sentencing, and the structure of the Olympic committee and USA gymnastics).

of possessing child pornography and destroying and concealing records before Magistrate Judge Ray Kent.⁷¹ He was later sentenced to 60 years for those charges.⁷²

At the state level, Nassar pleaded guilty to a total of ten counts of criminal sexual conduct in the first degree—seven counts in Ingham County and three counts in Eaton County.⁷³ Nassar’s plea fell under Section 328 of the Michigan Penal Code.⁷⁴ Conduct under this section involves sexual penetration with a person who is under the age of 13 or between the ages of 13 and 16 under certain enumerated circumstances, such as being “in a position of authority over the victim and us[ing] this authority to coerce the victim to submit.”⁷⁵ This also includes instances when “force or coercion [is used] to accomplish the sexual penetration”⁷⁶ or when an “actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.”⁷⁷ The punishment for the felony of criminal sexual conduct in the first degree carries a minimum of 25 years imprisonment and a maximum of life imprisonment for adults committing criminal sexual conduct against an individual under 13.⁷⁸ Multiple violations of the same offense can be imposed consecutively for criminal conduct “arising from the same transaction.”⁷⁹

⁷¹ 18 U.S.C. §§ 2252A(a)(2)(A), (b)(1) (2020); 18 U.S.C. § 2256(8)(A) (2020); 18 U.S.C. § 1519 (2020); Kim Kozlowski, *Nassar Pleads Guilty To Child Porn Charges*, DETROIT NEWS (July 11, 2017, 11:31 AM), <https://www.detroitnews.com/story/news/local/michigan/2017/07/11/nassar-guilty-child-porn/103600486/> (noting that the charges also included the concealment and destruction of evidence).

⁷² Hinkley & LeBlanc, *supra* note 9.

⁷³ Brief of Appellant at 3–5, *United States v. Lawrence Nassar*, No. 17-2490, 2018 U.S. App. LEXIS 23808 (6th Cir. 2018) (summarizing the federal and state charges and the pleas that Nassar accepted); Alanna Vagianos, *Larry Nassar Pleads Guilty to 10 Counts of First-Degree Criminal Sexual Conduct (UPDATE)*, HUFF POST (Nov. 22, 2017), https://www.huffpost.com/entry/larry-nassar-pleads-guilty-to-first-degree-criminal-sexual-conduct_n_5a14659de4b025f8e931f695 (last updated Nov. 29, 2017) (reporting that Nassar pleaded guilty to three counts on November 22 and seven additional counts on November 29).

⁷⁴ MICH. COMP. LAWS ANN. § 750.520b (West 2020).

⁷⁵ § 750.520b(1)(a), (1)(b)(iii).

⁷⁶ § 750.520b(1)(d)(ii).

⁷⁷ § 750.520b(1)(f)(iv).

⁷⁸ § 750.520b(2).

⁷⁹ § 750.520b(3).

Four of the charges to which Nassar pleaded guilty carried a minimum sentence of 25 years.⁸⁰ In Ingham County, Judge Rosemarie Aquilina notably allowed all of Nassar's accusers to speak, although Nassar had only pleaded guilty to claims involving a subset of those accusers.⁸¹ Judge Aquilina cited *People v. Waclawski* in support of her decision to allow all victims to testify:

[The State of Michigan] grant[s] individuals who suffer direct or threatened harm as a result of a convicted individual's crime the right to submit an impact statement both at the sentencing hearing and for inclusion in the [pre-sentencing investigation report]; however, the right is not limited exclusively to the defendant's direct victims. Instead, "a sentencing court is afforded broad discretion in the sources and types of information to be considered when imposing a sentence" Moreover, this broad discretion does not infringe on a convicted individual's due process rights because the evidence was not taken into consideration in determining the defendant's guilt.⁸²

Originally, 90 women were slated to deliver VIS during the sentencing phase of the Ingham County Nassar case.⁸³ Ultimately, 156 victims gave testimony as momentum and support grew.⁸⁴ These VIS included written statements, oral statements in person, oral statements by video feed, and statements delivered by proxy for victims.⁸⁵ Victims also delivered VIS to the court in Eaton County (bringing the total to 204 victims),⁸⁶ but those VIS are not analyzed in this research.

Three days after the VIS began, Nassar submitted a six-page letter to Judge Aquilina expressing concern for his mental health if he had to listen to the statements

⁸⁰ Vagianos, *supra* note 73.

⁸¹ Nick Chase, *Nassar Sentencing Hearings Begin in Ingham County*, WMMQ.COM (Jan. 16, 2018), <https://wmmq.com/nassar-sentencing-hearings-begin-in-ingham-county/>.

⁸² *People v. Waclawski*, 780 N.W.3d 321, 358 (Mich. Ct. App. 2009) (citations omitted).

⁸³ Abby Takas, *Victim Impact Statements Take on New Role After Nassar Case*, MICH. DAILY (Mar. 15, 2018, 5:29 PM), <https://www.michigandaily.com/section/campus-life/victim-impact-statements-take-new-role-after-nassar-case>.

⁸⁴ Tom Lutz, *Victim Impact Statements Against Larry Nassar: "I Thought I Was Going to Die,"* GUARDIAN (Jan. 24, 2018, 2:34 PM), <https://www.theguardian.com/sport/2018/jan/24/victim-impact-statements-against-larry-nassar-i-thought-i-was-going-to-die>.

⁸⁵ See Rahal & Kozlowski, *supra* note 11.

⁸⁶ *Id.*

and sit in the witness box physically facing the victims.⁸⁷ Nassar accused the judge of creating a “media circus” by placing him in the witness box in front of cameras.⁸⁸ Judge Aquilina read his statement aloud, stating “[y]ou may find it harsh that you are here listening, but nothing is as harsh as what your victims endured for thousands of hours at your hands.”⁸⁹ Judge Aquilina ultimately sentenced Nassar to 40 to 175 years in prison.⁹⁰ He was already serving his prior prison sentence on child pornography charges.⁹¹

The Nassar VIS were subsequently published on a public website, *In Our Own Words*, which collected and published statements with the aim “to be a resource for the victims, for the families, for researchers, for journalists, for the public, and for others who unfortunately recognize these stories as similar to their own, to help them come forward in a way that these survivors were initially unable to, because of the reputation and standing of their attacker.”⁹² Each of the 156 VIS from the Ingham County proceeding have their own page on this site.⁹³ However, eight of these are not included in our corpus. Seven were video submissions whose transcripts are not included in the record. One VIS was not available due to a duplicate link.

The VIS were delivered between January 16 and 24, 2018, in Lansing, Michigan.⁹⁴ For the VIS in our corpus, victims orally delivered their own statements in court in 106 instances (with one further providing hers by video link).⁹⁵ Court officials orally delivered the VIS on behalf of the victims in 34 instances.⁹⁶ Family members orally delivered the VIS on behalf of the victims in 8 instances.⁹⁷ One victim provided a written VIS to the judge.⁹⁸ We have kept the VIS intact, removing

⁸⁷ Bryan Armen Graham, ‘You Are Pure Evil’: Larry Nassar Says It’s Too Hard to Listen to Victim Statements, *GUARDIAN* (Jan. 18, 2018), <https://www.theguardian.com/sport/2018/jan/18/larry-nassar-abuse-usa-gymnastics-judge-letter>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Mencarini, *supra* note 10.

⁹¹ Hinkley & LeBlanc, *supra* note 9.

⁹² IN OUR OWN WORDS, <https://inourownwords.us/> (last visited Nov. 1, 2020).

⁹³ *Id.*

⁹⁴ Chase, *supra* note 81.

⁹⁵ See IN OUR OWN WORDS, *supra* note 92 (compiling all of the victim impact statements).

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See *id.*

only court procedural interventions, interruptions, and the voice of the Judge as she responds. This resulted in a corpus of 179,298 words in 148 texts.

Regarding the ethics of studying these VIS, they are public statements made in open court, nationally televised. These VIS accordingly present a rarely accessible corpus of sexual assault narratives that are intended to be consumed by the public for action and response.

The next section explains the research methodologies that governed our review of the Ingham County VIS corpus.

III. RESEARCH METHODOLOGY

This study applies a corpus-based discourse analysis to the language of the law. In so doing, it avoids a selective or conclusion-driven analysis of this significant collection of documents. Applying new methodologies like corpus-based discourse analysis to law is important and impactful, particularly because of modern politicization and divisiveness and its effects on legal scholarship, discourse, and reform.

Corpus linguistics is a field that makes use of computational methods and statistical tests to make observations about language analyzing large “bodies” (or corpora) of texts.⁹⁹ These corpora are usually much too large to analyze using hand-and-eye alone, because they are generally comprised of hundreds of thousands, millions, or even billions of words. Researchers use computational methods and tools to instantaneously create frequency lists of all words in a given corpus, or to search for all instances of a certain word or phrase and to show these in their immediate contexts (called a concordance).¹⁰⁰ To understand the behavior of these specific words, users may perform collocation analysis, by generating a list of words that co-occur with this target word or phrase (also known as a “node”) with higher-than-average frequency or statistical significance.¹⁰¹

These quantitative methods lead naturally to qualitative forms of analysis: “[a]ssociation patterns represent quantitative relations, measuring the extent to which features and variants are associated with contextual factors. However functional

⁹⁹ TONY MCENERY & ANDREW HARDIE, CORPUS LINGUISTICS: THEORY, METHOD, AND PRACTICE (2012).

¹⁰⁰ PAUL BAKER, USING CORPORA IN DISCOURSE ANALYSIS 71 (2006).

¹⁰¹ *Id.* at 96.

(qualitative) interpretation is also an essential step in any corpus-based analysis.”¹⁰² In this work, we consider discourse, or “language in use,”¹⁰³ as a collection of “practices which systematically form the objects of which they speak.”¹⁰⁴ We consider discursive choices (e.g., calling one’s doctor, “Doc,” “Doctor,” “Dr. Smith,” or by their first name) to be meaningful—even when they are not necessarily conscious decisions. These “discourses are not valid descriptions of people’s ‘beliefs’ or ‘opinions’ and they cannot be taken as representing an inner, essential aspect of identity such as personality or attitude. Instead they are connected to practices and structures that are lived out in society from day to day.”¹⁰⁵ Therefore, we make use of the more quantitative side of our findings to delve deeper into closer analysis, in the aim of coming to some conclusions about society, by observing patterns over large quantities of discourse.

There are a number of tools for this analysis. Corpus linguistics software packages (sometimes called “concordancers”) offer a range of tools including frequency,¹⁰⁶ concordance,¹⁰⁷ and collocation.¹⁰⁸ In our research and analysis we made use of two web-based tools: SketchEngine¹⁰⁹ and Wmatrix.¹¹⁰

Some of these tools encode corpora with additional information. SketchEngine makes use of a part-of-speech (POS) tagger, which assigns POS tags to each word in an uploaded corpus.¹¹¹ Using this functionality, researchers may sort word lists by part of speech (e.g., all nouns, in order of descending frequency), carry out a

¹⁰² DOUGLAS BIBER, SUSAN CONRAD & RANDI REPPEN, *CORPUS LINGUISTICS: INVESTIGATING LANGUAGE STRUCTURE AND USE* 5 (1998).

¹⁰³ GILLIAN BROWN & GEORGE YULE, *DISCOURSE ANALYSIS* 27 (1983).

¹⁰⁴ MICHAEL FOUCAULT, *THE ARCHAEOLOGY OF KNOWLEDGE* 49 (1972).

¹⁰⁵ BAKER, *supra* note 100, at 4.

¹⁰⁶ A simple count of all instances of an item in a corpus.

¹⁰⁷ A specific instance (e.g. word or phrase) with some of its surrounding context.

¹⁰⁸ Items which co-occur more often than would be expected due to chance alone, calculated using statistical measure(s).

¹⁰⁹ Adam Kilgarriff, Vít Baisa, Jan Bušta, Miloš Jakubíček, Vojtěch Kovář, Jan Michelfeit, Pavel Rychlý & Vít Suchomel, *The Sketch Engine: Ten Years On*, 1 *LEXICOGRAPHY* 7–36 (2014); SKETCHENGINE, <https://www.sketchengine.eu/> (last visited Nov. 1, 2020).

¹¹⁰ WMATRIX CORPUS ANALYSIS AND COMPARISON TOOL, <http://ucrel.lancs.ac.uk/wmatrix/> (last visited Nov. 1, 2020).

¹¹¹ Kilgarriff et al., *supra* note 109.

disambiguating search (e.g., all concordance lines in which *assault* is used as a noun, but not a verb), or group collocates by grammatical position (e.g., all adjectival modifiers of *doctor*). We use SketchEngine for all frequency, concordance, and collocation analysis.

Another corpus linguistics tool—Wmatrix—has a built-in tool that assigns semantic tags to all words and phrases in an uploaded corpus.¹¹² Using this function, users are able to search for words that are semantically related.¹¹³ For instance, rather than searching for the word *body*, a search for the semantic field of “THE BODY AND THE INDIVIDUAL” returns all instances of words such as arm, leg, hip, back, and so on. We make use of this in Section IV.C to analyze the multitude of ways in which victims describe the harms they experienced.

Throughout the following section, examples from the corpus will be presented in numbered illustrative concordance lines. In these concordance lines and in discussion, the node word(s) will appear in italics. Any additional lexis that form part of the discussion will be underlined for ease of reference. The sources of these victim impact statements will be footnoted.

Additional conventions have been adopted from corpus linguistics. Frequency information (or the number of times that a certain feature occurs) will be provided in brackets. Additionally, some search terms are made up of lemmas, or all possible inflections of a certain word. For example, rather than searching for *assault* on its own, a lemma search would return *assault*, *assaults*, *assaulted*, and *assaulting*. Lemmas appear in curly brackets, i.e.: {assault}. This lemma appears 221 times in the corpus, which might be discussed in the text as, {assault} [freq. 221].

IV. ANALYSIS

This section examines how the victims describe the defendant, how they describe his conduct, and how they describe their harms by applying the research methodologies explained in Part III.

A. Naming the Perpetrator

Naming is a highly meaningful social activity that can encode and enforce power and solidarity in spoken interaction.¹¹⁴ This section examines how the VIS

¹¹² WMATRIX, *supra* note 110.

¹¹³ *Id.*

¹¹⁴ See, e.g., Rebecca Hamilton, *No, Naming and Shaming Sexual Offenders Doesn't Always Help*, WASH. POST (Dec. 21, 2017, 12:59 PM), <https://www.washingtonpost.com/outlook/no-naming-and-shaming->

name the defendant and the significance of these different naming strategies. This section examines nomination of Larry Nassar first and other naming strategies second.

1. Nomination: Larry Nassar

The sociolinguistic context surrounding the delivery of the VIS in the Nassar trial was distinct from the outset. Victims have a right to address the judge in sentencing.¹¹⁵ Nassar, though, was physically situated in the witness box with his lawyer at the front of the courtroom when these VIS were delivered.¹¹⁶ The women were physically and practically speaking to the defendant more directly than to the court, altering the delivery and context of these VIS. This context makes naming strategies even more interesting for examination.

Speakers had to select a term of address for an abuser, a task that was highly difficult given the number of identities that he occupied over the course of the years in which he knew his victims (see line 1).¹¹⁷

1. I no longer know how to address this man. He is not a *doctor* as he has done more harm than he has good. He is not my friend so I will not call

sexual-offenders-doesnt-always-help/2017/12/21/4210486c-e5bb-11e7-ab50-621fe0588340_story.html (“The media has emphasized examples of career-related sexual assault and harassment where this public naming-and-shaming has been the only action available to remove the power that enabled predators like Harvey Weinstein.”). See generally D.D. Hook, *First Names and Titles as Solidarity and Power Semantics in English*, 22 INT’L REV. APPLIED LINGUISTICS LANGUAGE TEACHING 183–90 (1984); Geoffrey Leech, *The Distribution and Function of Vocatives in American and British English Conversation*, in OUT OF CORPORA: STUDIES IN HONOUR OF STIG JOHANSSON 107–18 (Hilde Hasselgård & Signe Oksefjel eds., 1999).

¹¹⁵ See, e.g., Dep’t of Attorney Gen., *Crime Victim Rights*, MICHIGAN.GOV, https://www.michigan.gov/ag/0,4534,7-359-82917_100846_100865---,00.html (last visited Nov. 6, 2020) (stating that victims have a right to “[m]ake an oral or written impact statement at the time of sentencing in court, or submit a written statement to the judge”).

¹¹⁶ See, e.g., *Larry Nassar’s Survivors Speak, and Finally the World Listens—And Believes*, N.P.R. (Dec. 10, 2018, 6:01 AM), <https://www.npr.org/2018/12/07/674525176/larry-nassars-survivors-speak-and-finally-the-world-listens-and-believes> (“Larry is brought in, his hands uncuffed. He sits up at the front, next to his lawyer, in the witness stand. Judge Rosemarie Aquilina wants him there so victims can look at him directly while they make their statements.”).

¹¹⁷ Supporting text extracted from the corpus are numbered for reader clarity. These line numbers refer to the sequential placement in this Article. The footnote that follows identifies the source within the body of research.

him *Larry*, and he's certainly not a man so I cannot call him *Mr. Nassar*. He is just a monster.¹¹⁸

Though naming is consequential, it is unlikely to have been conscious in VIS. Selections in naming strategy can nonetheless expose underlying understandings about social roles and relationships between interlocutors.¹¹⁹ We have adapted frameworks from Hook¹²⁰ and Leech¹²¹ to demonstrate how this might behave (see Figure 1). Certain naming conventions work to create distance between the speaker and the subject while others signal that the speaker is aligning herself with the subject.



| | | |
|--|---------------------------|--|
|  Greater solidarity | Title | Greater distance  |
| | Title + surname | |
| | Surname only | |
| | Forename + surname | |
| | Forename only | |
| | Nicknames and diminutives | |

Figure 1: Framework developed to operationalise categories of solidarity and distance between the victim and the defendant.

Table 1 below presents frequencies of various nomination strategies for Nassar. It is notable that, nearly without fail, the most frequent naming strategies are those showing greatest solidarity. As the frequencies decrease, solidarity decreases and distance grows.

¹¹⁸ Taylor Livingston, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/taylor-livingston/> (emphasis and underline added).

¹¹⁹ See Hook, *supra* note 114, at 183–90; Leech, *supra* note 114, at 107–18.

¹²⁰ Hook, *supra* note 114, at 183–90.

¹²¹ Leech, *supra* note 114, at 107–18.

| Nomination type | Nomination | Frequency | Percentage |
|--|----------------------------|-----------|------------|
| Diminutive only | <i>Larry</i> | 581 | 49.2% |
| Diminutive + surname | <i>Larry Nassar</i> | 264 | 22.4% |
| Surname only | <i>Nassar</i> | 157 | 13.3% |
| Title + surname | | 155 | 13.1% |
| | <i>Mr. Nassar</i> | 78 | |
| | <i>Doctor Nassar</i> | 77 | |
| Title + diminutive + surname | | 14 | 1.2% |
| | <i>Doctor Larry Nassar</i> | 11 | |
| | <i>Mr. Larry Nassar</i> | 3 | |
| Title + diminutive | <i>Doctor Larry</i> | 4 | 0.3% |
| Forename + middle initial + surname | <i>Lawrence G Nassar</i> | 3 | 0.3% |
| Attribute + surname | <i>Inmate Nassar</i> | 3 | 0.3% |

Table 1: Frequency of Nassar nominations¹²²

The most frequent way of referring to Nassar is with a diminutive version of his forename only: *Larry* [freq. 581, 49.2%]. As a diminutive, this indicates a high level of solidarity and a very low level of social distance. It is striking that this solidarity remains so prominent despite the context of the VIS: naming of the man who abused the speakers. Concordance lines containing this naming strategy indicate that this nomination is purposeful (line 2); that it is used as a marker of friendship and proximity between Nassar, victims' families, and others in the extended elite sporting circle. It is this sense of solidarity that brings a sense of deception to these examples (line 3); Nassar betrayed not only his position, but the personal trust of his patients:

2. *Larry Nassar* was never *Doctor Nassar* to me. He was *Larry*, our friend, and not only to myself but to my family, coaches, and teammates who trusted him also.¹²³

¹²² The authors prepared all tables using the methodologies described in Part III. The charts reflect our search results of the corpus comprised of victim impact statements published on <https://inourownwords.us>.

¹²³ *Jamie Doski*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/jamie-doski/> (emphasis and underline added).

3. To you, *Larry*, you betrayed my trust and used my innocence against me.
You broke and shattered my life.¹²⁴

The next most frequent usage is diminutive + surname: *Larry Nassar* [freq. 264, 22.4%]. Previous studies have determined that forename + surname is the most ideologically neutral method of naming, at least within a legal context.¹²⁵ This strategy, which is equidistant between solidarity and distance, also presents Nassar as a well-respected expert within his field (line 4).

4. I didn't know that doctors weren't supposed to be doing these things to girls alone and unsupervised. I knew it felt strange, but you were *Larry Nassar*. I was supposed to feel privileged to be treated by you.¹²⁶

References to surname only ("Nassar") comprise 13.3% of results. These fall into two categories: the reported (and often distanced) voices of other actors, such as a coach or trainer (line 5). In this first category, the close relationship reflected in diminutive is not present, and additional distance is accorded due to accusations coming to light. An additional pattern is demonstrated in line 6. In these instances, the victim uses her own voice to distance herself from Nassar, using his surname only when expressing her current emotional state.

5. She asked me all sorts of questions, did *Nassar* do something you thought was criminally wrong?¹²⁷
6. It is impossible to suppress the negative emotions and anger that are from *Nassar's* conduct.¹²⁸

Usage of titles—particularly those with social currency such as Mr. or Doctor—can indicate reverence, but can also show a high level of social distance and very low level of solidarity. While this pattern appears with quite low frequency (less than 15% for all titled nominations combined), its presence and absence are

¹²⁴ *Alexis Alvarado*, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/alexis-alvarado/> (emphasis and underline added).

¹²⁵ Amanda Potts & Siobhan Weare, *Mother, Monster, Mrs, I: A Critical Evaluation of Gendered Naming Strategies in English Sentencing Remarks of Women Who Kill*, 31 INT'L J. FOR SEMIOTICS L. 21, 35 (2017).

¹²⁶ *Abigail Mealy*, INOUROWNWORDS.US (Aug. 29, 2018), <https://inourownwords.us/2018/08/29/abigail-mealy/> (emphasis and underline added).

¹²⁷ *Jennifer Bedford*, INOUROWNWORDS.US (Aug. 7, 2018), <https://inourownwords.us/2018/08/07/jennifer-bedford/> (emphasis and underline added).

¹²⁸ *Amy Labadie*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/amy-labadie/> (emphasis and underline added).

both interesting. Due to the charges brought against Nassar, the use of “Doctor” is perhaps not as surprising as we initially found it to be. However, the specific usages of this item are particularly surprising: they appear as a method of juxtaposing the entitled position and the ensuing behavior (see line 7). Use of “Mr.” when Nassar is a “Dr.” also symbolically strips him of this social power (line 8). Lines with titles are more likely than others to also contain further, very negative, appraisal strategies that dehumanize the defendant, labeling him “monster,” “demon,” etc. The most extreme symbolic disempowerment is through the nomination strategy, “inmate Nassar,” which only occurs three times (one with a self-correction, line 9 below). These occur in the context of giving evidence about initial and ensuing treatments [freq. 2] and providing a coda to the story (see line 9).

7. *Doctor Nassar* told me that I was receiving, quote, medically necessary treatment that he had been performing on patients for over 30 years, end quote. As it turns out, much to my surprise, *Doctor Nassar* was not a doctor. He, in fact, was and forever shall be a child molester, a monster of a human being, end of story.¹²⁹
8. Lastly, *Mr. Nassar*, you are no longer called a doctor. You have been stripped of your medical license and soon you will be known by your prison number for what I hope to be the maximum sentence.¹³⁰
9. I hope after all this is done that we, all the amazingly strong survivors, can have some peace knowing that *Larry inmate Nassar* will be locked away and not able to hurt anyone anymore.¹³¹

This quantitative analysis of the naming strategies used in the VIS reveals several takeaways. While scholars traditionally study VIS for how they give voice to the harms that victims suffer, these VIS also reveal insights worthy of further study into how *perpetrators* garner and retain a relationship with the victim that coerces and effectively hides the underlying abuse.

2. Additional Naming Strategies: Larry Nassar

Of course, nomination is not the only method of identifying social actors in discourse. Additional naming strategies have been identified by generating wordlists

¹²⁹ *McKayla Maroney*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/mckayla-maroney/> (emphasis and underline added).

¹³⁰ *Danielle Moore*, INOUROWNWORDS.US (Aug. 6, 2018), <https://inourownwords.us/2018/08/06/danielle-moore/> (emphasis and underline added).

¹³¹ *Meaghan Ashcraft*, INOUROWNWORDS.US (Aug. 28, 2018), <https://inourownwords.us/2018/08/28/meaghan-ashcraft/> (emphasis and underline added).

of all nouns in the corpus and compiling those deemed relevant to Nassar after scrutiny. These have been categorized semantically in Table 2, below.

| Category | Naming strategies [frequency] |
|-----------------------|--|
| Professional function | <i>doctor</i> [360], <i>physician</i> [13] |
| Age/gender | <i>man</i> [131], <i>guy</i> [12] |
| Crime | <i>defendant</i> [68], <i>abuser</i> [26], <i>molester</i> [8], <i>pedophile</i> [7], <i>perpetrator</i> [4] |
| Appraisal | <i>monster</i> [79], <i>manipulator</i> [8] |
| Relationships | <i>friend</i> [48], <i>mentor</i> [5] |

Table 2: Additional naming strategies for Nassar, categorized by semantic sense and listed in descending order of category frequency.

The most frequent ways of referring to Nassar are in terms of his professional function: as a “doctor” or “physician.” This may seem obvious, given the nature of the charges brought against him. However, WordSketches of “doctor” reveal that a neutral or even positive appraisal of “doctor” Nassar carries across the entire concordance line. As a subject, “doctor” collocates with “treat,” “help,” “tell,” “care,” “send,” “work,” “see,” “think,” “do,” “be,” and “have.” As an object, collocates include “trust,” “see,” “call,” “become,” “question,” “know,” “let,” “have,” “remember,” “praise,” “respect,” “contact,” and “recognize.” Modifiers are similarly positive or neutral, including “gymnastics,” “male,” “sport,” “good,” “Olympic,” “medicine,” “team,” “famous,” “gymnastic,” “real,” “USA,” “prolific,” “renowned,” “hero,” “primary,” “care,” “safe,” “national,” “MSU,” and so on. While the charges on which Nassar was convicted rest upon abuse of his position as a “doctor,” constructions of the doctor-patient relationship in the VIS do not reflect a relationship of abuse.

Instead, it is Nassar as a “man” who is negatively evaluated. As a subject, “man” collocates with “affect,” “intimidate,” “force,” “place,” “yell,” “ruin,” “manipulate,” “break,” “assault,” “touch,” “change,” “help,” “abuse,” and “hurt.” The speaker’s identities as victims (i.e. when “man” collocates as an object of “trust,” “esteem,” “allow”) and as survivors and witnesses (i.e. when “man” collocates as an object of “stop,” “look,” “address,” “face”) come through. Modifiers of “man” are likewise conflicted: they reflect a past narrative of encounters with a trusted and respected medical practitioner (“powerful,” “wise,” “inspirational,” “funny”) and a current view of a known abuser (“sick,” “evil,” “disgusting,” “sickening”). Informality markers also appear in this category. Nassar is referred to as a “guy”—typically a naming strategy reserved for peers—to describe his engineered identity of the “good guy” or in descriptions of abuse that was normalized among athletes (line 10).

10. After my first appointment I remember looking for validation of what happened from friends who had also seen him for treatment. . . . I went to

my dance friends and asked them if they were uncomfortable in their appointments and they laughed and said, yeah, we joke Nassar was the first guy to finger us. . . . Now I am mortified that I didn't understand exactly what that meant in that time.¹³²

Nassar's criminal defendant role forms the basis of his naming with moderate frequency. The most frequent of these is "defendant," which appears 68 times, of which 27 (39.7%) appears within set phrases requesting permission to "directly address the defendant." Some specificity about the victims' conceptualizations of the crime are entailed in a range of other naming strategies: "abuser," "molester," "pedophile," and "perpetrator." Use of "abuser" would seem to indicate that victims identify Nassar's criminal conduct as "abuse," though we will demonstrate in Section IV.B.1 that this label is more complicated. Criminal naming strategies occur alongside alternative strategies, indicating social proximity (line 11) or respect afforded due to medical role (line 12). Of eight instances of "molester," all but one is qualified with "child" (e.g. line 12).

11. Larry's the most dangerous type of *abuser*, one who is capable of manipulating his victim through coldly-calculated grooming methodologies, presenting the most wholesome and caring external persona as a deliberate means to ensure a steady stream of young children to assault.¹³³
12. The doctor that is a child molester.¹³⁴

This very low frequency corresponds with a reluctance on the part of victims to characterize Nassar's behavior as pedophilia, a term with a dominant psychiatric connotation.¹³⁵ Pedophilia has a social and cultural meaning that aligns the "evil" and "monster" language used in Section IV.A.¹³⁶ Only one victim addresses Nassar

¹³² Jessica Smith, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/09/jessica-smith/> (emphasis and underline added).

¹³³ Rachel Denhollander, INOUROWNWORDS.US (Aug. 29, 2018), <https://inourownwords.us/2018/08/29/rachael-denhollander/> (emphasis and underline added).

¹³⁴ Jordon Wieber, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/jordon-wieber/> (emphasis and underline added).

¹³⁵ See Colleen M. Berryessa, *Potential Implications of Research on Genetic or Heritable Contributions to Pedophilia for the Objectives of Criminal Law*, 8 RECENT ADVANCES DNA & GENE SEQUENCES 65, 65 (2014).

¹³⁶ See *id.* at 68.

directly while assigning him the label and identity of “pedophile,” and this is underscored through semantic repetition following “child molesting” (see line 13).

13. And to the defendant, you ended up right where you always liked to be, number one sports medicine doctor, number one gymnastics doctor in the country, and now you’re the world’s number one child molesting pedophile that has ever been discovered.¹³⁷

Interestingly, in contrast to the isolated description of Nassar as a “pedophile,” others were more likely to describe Nassar’s conduct as that of a “pedophile” only in connection with describing how *others* failed to protect the victims from Nassar’s conduct (line 14). Both USAG and MSU shared the accountability in the omission described by the women (line 15). MSU President Lou Anna Simon bore one pointed accusation specifically (line 16), which is noteworthy because she ultimately resigned after the trial.

14. I felt betrayed by Michigan State for denying any responsibility and for leaving me to fend for myself against this serial *pedophile*.¹³⁸
15. It was a decision that MSU and USA Gymnastics made to create environments for this *pedophile* to thrive in.¹³⁹
16. In reports [the President of Michigan State University, Lou Anna Simon] is quoted as saying, I have been told it is virtually impossible to stop a determined sexual predator and *pedophile*, that they will go to incomprehensible lengths to keep what they do in the shadows. Okay, Lou Anna, then why when these allegations surfaced in the ’90s was he not fired then? Why did MSU continue to employ Larry?¹⁴⁰

The dehumanizing naming strategy of “monster” is surprisingly frequent and expansive in its application (occurring 79 times). Victims sometimes use this strategy within their descriptions of abuse, or in narratives about changing conceptualizations of Nassar. Its usage in alignment with Nassar is likely not surprising. However, notably, the most prominent pattern in “monster” concordance lines is in seeking the

¹³⁷ *Bailey Lorencen*, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/bailey-lorencen/> (emphasis and underline added).

¹³⁸ *Victim 186*, INOUROWNWORDS.US (Aug. 28, 2018), <https://inourownwords.us/2018/08/28/victim-186/> (emphasis and underline added).

¹³⁹ *Kristen Thelen*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/kristen-thelen/> (emphasis and underline added).

¹⁴⁰ *Clasina Syrovyy*, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/clasina-syrovyy/> (emphasis and underline added).

accountability of additional parties not in the criminal case at all, such as individual accomplices (line 17), Twistars Gymnastics (line 18), and MSU (line 19). In this way, the “monster” metaphor reveals the depths of the frustrations that victims experienced in holding institutional players accountable for their role enabling and emboldening Nassar’s misconduct. It is a particularly noteworthy reference because the liability of these institutions was not relevant to Nassar’s criminal sentencing. The victims, however, had a national platform, and they expressed great disgust that these institutions turned a “blind eye” to this “monster” (line 19).

17. I will now like to address all of the people who made this *monster* possible, if that’s okay? To John Geddert. Since you are too much of a coward to be here in court today and this week, I hope you are watching and listening to me right now. You and Larry carry a lot of the same characteristics. That’s funny. You are a disgrace.¹⁴¹
18. It’s clear that in an environment like Twistars a *monster* like the defendant could thrive.¹⁴²
19. I can’t get over the fact that MSU could have done something to prevent this from happening to me and the individuals that turned a blind eye to the *monster* that is Larry Nassar.¹⁴³

In the final pattern of naming, victims revert to terms of social closeness: “friend” [freq. 48] and “mentor” [freq. 5]. These strategies often stack with other forms of positive appraisal (see lines 20–21), depicting a pre-crime or in-crime narrative of solidarity and proximity. These serve dual purposes. Legally, they contribute to the contextualization of the relationship as one fitting with the crime. Socially, they give victims latitude to express a sense of personal outrage and hurt, directly to their betrayer.

20. From the time I was eight through 33 years old, you were in my life; a *doctor*, a *friend*, a second father, a person I confided in to make everything all right.¹⁴⁴

¹⁴¹ *Lindsey Lemke*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/lindsey-lemke/> (emphasis and underline added).

¹⁴² *Bailey Lorencen*, *supra* note 137 (emphasis added).

¹⁴³ *Amy Labadie*, *supra* note 128 (emphasis and underline added).

¹⁴⁴ *Victim 138*, INOUROWNWORDS.US (Sept. 6, 2018), <https://inourownwords.us/2018/09/06/victim-138/> (emphasis and underline added).

21. I trusted you, *Larry*. I trusted you as an adult figure, a *mentor*, and someone who had good morals, especially someone coming from a medical background.¹⁴⁵

This evolution in sentiment can be seen in a number of statements (e.g. line 22), accompanied by a sense of shame, disgust, or shock. In one instance (line 23), this betrayal and adulteration of “friendship” is taken even further. A victim states that Nassar will become a “friend” to others in prison, alluding to a possibility that he may be sexually assaulted.¹⁴⁶ This sentiment occurs in at least four VIS and was controversially touched upon by Judge Aquilina in sentencing.¹⁴⁷ This stands in conflict with other places in this analysis in which the victims are empowered by the ability to ensure that no one else ever suffers the way that they did.

22. *Larry Nassar* was never *Doctor Nassar* to me. He was *Larry*, our *friend*, and not only to myself but to my family, coaches, and teammates who trusted him also. I have felt sick to my stomach every day since realizing I have been a victim of his over ten times for his own sexual pleasure.¹⁴⁸
23. My whole family was fooled by you, but I know now who you really are, a child molester and a master manipulator, and I don’t blame myself anymore for being the innocent child that I was. I will very soon, with the help of my family and my friends and my psychologist, be free of this pain that you’ve caused me. You, on the other hand, will learn a whole new meaning for the word friend in prison. You have no family, and freedom to you will soon become any moment when you’re not in fear or when you forget for even one second that your victims are living wonderful lives as survivors while you rot in your cage.¹⁴⁹

In addressing the defendant, victims continued to utilize names that reflected the original relationships of trust, confidence, and even friendship that they had

¹⁴⁵ *Bayle Pickel*, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/bayle-pickel/> (emphasis and underline added).

¹⁴⁶ Court documents allege that Nassar was assaulted in prison nearly as soon as he was released into the general population. Kim Kozlowski, *Nassar Assaulted in Prison; Court Filing Blames Judge*, DETROIT NEWS (July 25, 2018, 10:56 AM), <https://www.detroitnews.com/story/news/local/michigan/2018/07/25/larry-nassar-assaulted-prison/833106002/>.

¹⁴⁷ See, e.g., Graeme Wood, *Where Nassar’s Judge Went Wrong*, ATLANTIC (Jan. 24, 2018), <https://www.theatlantic.com/politics/archive/2018/01/nassar-judge/551456/> (criticizing the judge for this language).

¹⁴⁸ *Jamie Doski*, *supra* note 123 (emphasis and underline added).

¹⁴⁹ *Kamerin Moore*, INOUROWNWORDS.US (Aug. 24, 2018), <https://inourownwords.us/2018/08/24/kamerin-moore/> (emphasis and underline added).

shared with Nassar. Positively and neutrally valanced naming strategies (such as “doctor” and “man”) are much more frequent than negatively valanced naming strategies (such as “monster” or “manipulator”). The word “friend” is still used with some frequency (albeit retroactively) to describe who Nassar was. This reveals how understanding abuse begins with understanding who Nassar *was* juxtaposed with how the women see him now. It reveals the depths of the challenges in identifying abuse contemporaneously, naming it as such, and reporting it. Nassar was distinctly not a “monster” as he perpetrated the abuse, in part, because he had built relationships of trust and respect.

Nomination strategies that depict respect and authority, like “Mr. Nassar” [78] and “Doctor Nassar” [77] do not seem to fit the victim’s narratives authentically, given his conduct. Yet, naming strategies that criminalize him, like “defendant” [68], “abuser” [26], “molester” [8], “pedophile” [7], “perpetrator” [4] or “rapist” [0] were not very dominant in the statements, despite the context of a criminal sentencing phase. Instead, the word “monster” [79] seems to be the closest to a replacement of the language previously used contemporaneous with the abuse. But it is less frequently the “defendant,” “perpetrator,” or “pedophile” they see as the “monster,” and more frequently it is “Larry,” the “friend” and “mentor” whom they condemn.

This linguistic analysis reveals important gaps in naming strategies between law and lived experiences. We know that “rapists” commit rape and “pedophiles” abuse children, but what language or word depicts someone who builds trust, relationships, and friendships, and then commits sexual abuse systemically in a medicalized frame? What terms capture the relational context of Nassar to the enabling power structures that allowed him to abuse so many victims for so many years? This linguistic analysis reveals the gaps between the language of law and the language of victims. It reveals the immense task for victims rewriting entire vocabularies from the ways in which relationships were understood and navigated contemporaneously to the later revelations of what was really occurring.

These VIS offer individualized accounts of harm that are critical to counterbalance “our one-dimensional ideas about the identity of the ‘criminal.’”¹⁵⁰ Just as revelations of Catholic priests abusing children transformed our cultural understanding of abuse within religious institutions,¹⁵¹ the VIS in Nassar’s sentencing challenge our collective categorizations and narrative of abuse. This

¹⁵⁰ *Reverberations*, *supra* note 38, at 1284–85.

¹⁵¹ See generally MARY GAIL FRAWLEY-O’DEA, *PERVERSION OF POWER: SEXUAL ABUSE IN THE CATHOLIC CHURCH* (2007).

analysis reminds all institutions and individuals that it is *because of* the relationships of trust and respect that abusers cultivate that their conduct can remain buried for so long. It suggests a powerful need to expand beyond the myopic “monster” image of a pedophile or the alleyway image of a rapist. Instead of narrow, demonized images of perpetrators, these VIS reveal that well-regarded and deeply respected—even revered—figures abuse power in devastating ways. That abuse is further enabled by interconnected systems and institutions that discount and disbelieve the allegations by deferring to the same respect and reverence that allowed the abuse to occur.¹⁵² These VIS reveal complex interconnections between individual wrongs buttressed by systemic institutional betrayals. Reshaping these collective understandings can improve our legal reporting responses, hold more entities and individuals accountable, and prevent future harm.

The next two sections analyze how victims describe the harms that Nassar perpetrated in ways that align (or do not align) with existing cultural understandings of misconduct and harms.

B. *Defining the Crime*

VIS can give voice to harms to inform the sentencing of perpetrators; they are not intended or expected to prove the merits of the underlying case.¹⁵³ Victims should explain the harms they have suffered, including physical, mental, or economic.¹⁵⁴ Thus, when victims give VIS, they are not confined to categorizing the conduct in any specific terms or using any particular naming or framing language.

Interesting questions then emerge regarding how victims described the criminal conduct as they detailed the harms that this caused them. Did the conduct fall under the umbrella of sexual assault, child abuse, medical battery, or other? Was Nassar a sex offender, a rapist, a pedophile, or something else entirely? Do victims relate to these legal categories at all or do they understand the conduct with more fluidity across legal and non-legal categories?¹⁵⁵ What can we learn about our legal boundaries and reporting mechanisms from the authentic voice of victims describing their understanding of the misconduct?

¹⁵² MILLER, *supra* note 58, at 194 (“I need you to know that it was all true. The friendly guy who helps you move and assists senior citizens in the pool is the same guy who assaulted me. One person can be capable of both. Society often fails to wrap its head around the fact that these truths often coexist, they are not mutually exclusive.”).

¹⁵³ *Victim Impact Statements*, *supra* note 32.

¹⁵⁴ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d).

¹⁵⁵ See, e.g., MILLER, *supra* note 58, at 139 (“Throughout the legal process, I felt like I was always trying to keep up, to not mess up, learn court jargon, pay attention, follow the rules.”).

To address some of these questions, we analyzed a generated word frequency list from the full corpus. Nouns with frequencies over 5 referring to criminal sexual conduct were isolated. These words and phrases have been categorized and listed by order of descending frequency in Table 3. None of the victims in our corpus used the technical legal phrasing, “criminal sexual conduct.” This is not in itself surprising because naming the crime is not the goal of the VIS. A number of other labels do occur, demonstrating that victims name the conduct using a range of terms, each with their own legal and social implications.

| Category of terms | Terms [frequency] |
|--------------------|--|
| Abuse | <i>{abuse}</i> [461] |
| Medical treatments | <i>{treatment}</i> [322] |
| Sexual assault | <i>sexual {assault}</i> [85], <i>sexually {assault}</i> [55] |
| Rape | <i>{rape}</i> [3] |

Table 3: Terms referring to criminal sexual conduct, grouped semantically and listed in descending order of overall frequency

The VIS described the conduct in a variety of categories of recognizable criminal behavior, including “abuse” (“sexual” and “child”), “treatments,” “sexual assault,” and “rape.” In the following sections, we explore each of these categories and their implications.

1. Naming the Conduct as Abuse

“Abuse” was the most frequent term used to describe Nassar’s conduct. The VIS used this word 461 times in a variety of ways. This included legal terminology (e.g. “sexual abuse”), lay descriptors of abuse (e.g. “abused my body”), and narratives of social “abuses” of trust and position. Each instance has been categorized on the basis of its surrounding co-text and can be found in Table 4 below.

| Category of abuse | Descriptions of abuse | Frequency | Overall |
|------------------------------|-------------------------------|-----------|------------|
| General | <i>abuse</i> (no qualifier) | 313 | 313 |
| Legal descriptors of abuse | <i>sexual abuse</i> | 113 | 119 |
| | <i>child abuse</i> | 6 | |
| Lay descriptors of abuse | <i>physical abuse</i> | 6 | 19 |
| | <i>emotional abuse</i> | 5 | |
| | <i>mental abuse</i> | 4 | |
| | <i>abuse . . . my body</i> | 4 | |
| Descriptors of social abuses | <i>abuse of power</i> | 9 | 19 |
| | <i>abuse of trust</i> | 6 | |
| | <i>abuse of position</i> | 3 | |
| | <i>abuse of knowledge</i> | 1 | |
| Wider conceptualization | <i>culture of abuse</i> | 4 | 4 |
| Other forms of abuse | <i>abuse of alcohol/drugs</i> | 4 | 4 |
| Total | | | 461 |

Table 4: Variation and frequency of abuse in the corpus, grouped by category.

The most frequent way of using “abuse” within the corpus is without additional qualifiers. Without modification, it may contain the multitudes of each possible attribute (for instance, a combination of sexual, mental, and physical abuse) (line 24). These statements demonstrate the challenges of naming the conduct as something demanding legal intervention (line 25). The victims struggle to decide what “counts” (line 26) and struggle with the reality that, once the “abuse” was named as such, this recognition would affect their lives (line 27).

24. You belittled, berated, and *abused*, and took advantage of me.¹⁵⁶
25. I had no idea what he was doing and that it was sexual assault or any type of abuse.¹⁵⁷
26. Did massaging my breast on a weekly basis brazenly walking around the room with an erection and ripping my clothes down without warning or care count as abuse?¹⁵⁸

¹⁵⁶ Lindsey Lemke, *supra* note 141 (emphasis added).

¹⁵⁷ Amy Labadie, *supra* note 128 (emphasis and underline added).

¹⁵⁸ Catherine Hannum, INOUROWNWORDS.US (Aug. 24, 2018), <https://inourownwords.us/2018/08/24/catherine-hannum/> (emphasis and underline added).

27. I now know I was struggling so hard to decide if it was abuse or not because I knew if I admitted to myself that it was, it would change my life so much, and it did.¹⁵⁹

Some victims defined the “abuse” more specifically as “sexual abuse.”¹⁶⁰ This occurred 119 times across the corpus. This “sexual abuse” terminology is most frequently used in relation to institutional reporting functions (line 28) and to make wider points about the frequency of sexual abuse in sports, rather than a focus on the isolated incidents of Nassar’s abuse. Very rarely, VIS defined the conduct as “child abuse,”¹⁶¹ “abuse of a child,”¹⁶² “childhood sexual abuse,”¹⁶³ or “child sexual abuse.”¹⁶⁴ One of these instances refers to MSU’s policy regarding reporting of suspected abuse, whereas the others directly identify the crime as child abuse (see line 29).

28. Now is the time to acknowledge that the very person that sits here before us now, who perpetrated the worst epidemic of sexual abuse in the history of sports, who is going to be locked up for a long, long time, this monster was also the architect of policies and procedures that are supposed to protect athletes from sexual abuse for both USA Gymnastics and the USOC.¹⁶⁵
29. Nassar has something few people can do in their lifetime, like how Kleenex is actual [sic] a corporate brand that many use in every day vocabulary to describe a tissue, he has forever identified his name with

¹⁵⁹ Madeline Johnson, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/madeline-johnson/> (emphasis and underline added).

¹⁶⁰ Jillian Swinehart, INOUROWNWORDS.US (Aug. 28, 2018), <https://inourownwords.us/2018/08/28/jillian-swinehart/> (“I was sexually abused by him hundreds of times without gloves or my consent.”).

¹⁶¹ Rachel Denhollander, *supra* note 133; Bailey Lorencen, *supra* note 137.

¹⁶² Kyle Stephens, INOUROWNWORDS.US (Aug. 5, 2018), <https://inourownwords.us/2018/08/05/kyle-stephens/>.

¹⁶³ Larissa Boyce, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/larissa-boyce/>.

¹⁶⁴ Emma Ann Miller, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/emma-ann-miller/>.

¹⁶⁵ Alexandra Raisman, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/alexandra-raisman/> (emphasis and underline added).

child sexual abuse. His legacy as a medical God has been poisoned by his sickening desire to molest children.¹⁶⁶

When “sexual abuse” is used to describe the victims’ personal experiences, it is often incorporated into narratives of a realization taking place a significant period of time removed from the abuse itself. These uses of “sexual abuse” reflect a struggle to reconceptualize and self-identify as a sexual abuse victim (see line 30), particularly when processed through the lens of media coverage of sexual abuse (line 31).

30. The fact that I was *sexually abused* by you is something that I’m still wrapping my head around.¹⁶⁷
31. It took the media coverage of the *sexual abuse scandal in the Catholic church* and a friend confiding the details of her sexual abuse for me to realize that something was wrong.¹⁶⁸

This analysis reflects the fractured ways in which victims characterize Nassar as an individual. The sexual underpinnings of the conduct come out in victims describing Nassar’s intentions. Using terms such as “twisted sexual pleasure,” “your own sexual gratification,” and “sexual pleasure” reveal that women do identify the *sexual* aspect of the criminal conduct and are able to conceptualize themselves as victims even as they struggle to connect themselves directly to the acts described.¹⁶⁹

Lay descriptors of abuse (i.e. “emotional abuse,” “abused my body”) are quite infrequent. This is a somewhat surprising result, as victims are not tasked with defining the crime legally in VIS but with providing narratives of conduct and harm in their own words. These lay descriptors often come clustered together (line 32), offering an overview of a constellation of abuse. Similar patterns emerge in the category we have called “social abuses,” containing, for example, abuses of trust and power (see line 33). Concordance lines addressing social abuses reveal accounts of

¹⁶⁶ *Emma Ann Miller*, *supra* note 164 (emphasis and underline added).

¹⁶⁷ *Bethany Bauman*, INOUROWNWORDS.US (Aug. 6, 2018), <https://inourownwords.us/2018/08/06/bethany-bauman/> (emphasis and underline added).

¹⁶⁸ *Kyle Stephens*, *supra* note 162 (emphasis and underline added).

¹⁶⁹ *Jamie Dantzsch*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/jamie-dantzsch/>; *Kristen Thelan*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/kristen-thelan/>.

additional harm (line 34), describing the “trauma of his abuse,”¹⁷⁰ the “extent of the abuse,”¹⁷¹ and the “memory of the abuse.”¹⁷²

32. Larry Nassar, you sexually, mentally, and physically *abused* me hundreds of times without gloves, lubricant, or proper sanitation.¹⁷³
33. [Nassar] *abused* my trust as well as my body.¹⁷⁴
34. As a medical professional I am sickened and angered by your *abuse of power and notoriety* for your own self gain. It took away my ability to feel safe, to be able to be intimate or enjoy human contact in any way.¹⁷⁵

In summary, “abuse” is highly frequent but ambiguous and varied in its usage. This term is not limited to sexual or physical abuse. It also reflects narratives about abuses of power and trust.¹⁷⁶ The two forms of abuse central to the offense—abuse of power/trust and sexual/physical abuse—were entirely interconnected in many VIS, reflecting critical takeaways to incorporate in law and policy reforms.

2. Naming the Conduct as “Treatment” Deviations

Given the nature of the criminal charges focused on medical treatments,¹⁷⁷ it is unsurprising that medicalization of the abuse would form some part of the narratives provided within the VIS. Indeed, {treatment} appears 320 times in the corpus, of which 309 refer to medical treatments (as opposed to, for instance, “treatment table”). Usage falls under several categories including: un-modified usage [freq. 234], descriptions of legitimate treatments [freq. 44], distancing techniques from the term treatment [freq. 28], and finally, description of illegitimate treatments [freq. 6] (see Table 5 for examples).

¹⁷⁰ Larissa Boyce, *supra* note 163.

¹⁷¹ Brianne Randall, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/brianne-randall/>.

¹⁷² Larissa Boyce, *supra* note 163.

¹⁷³ Kaylee McDowell, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/kaylee-mcdowell/> (emphasis and underline added).

¹⁷⁴ Jessica Smith, *supra* note 132.

¹⁷⁵ Marta Stern, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/marta-stern/> (emphasis and underline added).

¹⁷⁶ Arianna Guerrero, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/arianna-guerrero/>.

¹⁷⁷ MICH. COMP. LAWS ANN. § 750.520b(1)(f)(iv) (West 2020).

| Category of treatment | Descriptions of abuse | Frequency |
|------------------------|---|------------|
| Un-modified | <i>treatment</i> | 234 |
| Legitimate treatment | <i>osteopathic-style treatments, non-surgical treatment, unconventional treatment, new treatment, legitimate medical treatment, widely known and accepted treatment, etc.</i> | 44 |
| Distancing techniques | <i>quote treatments unquote, guise of treatment, so-called treatment, etc.</i> | 28 |
| Illegitimate treatment | <i>improper treatment, sick treatment, not a valid treatment, etc.</i> | 6 |
| Total | | 309 |

Table 5: Categories, frequencies, and examples of various usages of {treatment} in the VIS corpus.

Un-modified descriptions of {treatment} contain additional detail indicating the illegitimacy and abuse that these experiences entailed (line 35). This language comes from the defendant and his enablers' insistence that the conduct was appropriately understood as a medical treatment. One frequent category further modifies descriptions of "treatment" with legitimizing strategies drawn from medical terminology (line 36).

35. *Treatments* included vaginal penetration to treat my low back pain.¹⁷⁸

36. He said that it was an unconventional *treatment*, but if I trusted him, he felt that it could help me too.¹⁷⁹

A large number of concordance lines are consistent with victims struggling to identify and accept that what they endured was sexual abuse (line 37). This, in turn, called for victims to shift their understanding of what was happening from their earlier categorization of "treatment" to some other category (line 38). This involved both realizing that the treatment was not, in fact, medical, and then a difficult quest to rename it (line 39).

37. I never told anyone because I just thought it was normal *treatment* that was done to everyone, but my young self was wrong. When the first news

¹⁷⁸ *Clasina Syrový*, *supra* note 140 (emphasis and underline added).

¹⁷⁹ *Chelsea Williams*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/chelsea-williams/> (emphasis and underline added).

article came out I didn't believe it. I still believed the treatments were to help me, not hurt me.¹⁸⁰

38. I was confused because those *treatments*, the release technique applied through my vagina, were the same *treatments* I recall receiving from you, but I never questioned whether or not you thought they were medically necessary.¹⁸¹
39. I was in denial over these *treatments* being sexual abuse or molestation because he was the gymnastics doctor.¹⁸²

Victims distance themselves from adoption of the term in 28 examples and outright disagree with it in only 6 cases. Methods of distancing include use of quotation (line 40) and repetition (line 41). The most infrequent pattern of all is delegitimizing the treatment altogether; this occurs six times total (line 42, for example).

40. These, quote, *treatments* happened over and over again, eating away at my innocence as a child.¹⁸³
41. As a mother I understand how gravely heinous Larry's *treatments*—*treatments*—were.¹⁸⁴
42. And I have had to think through and talk about the hundreds, hundreds of appointments and Nassar home visits and cringe at all of the times I should have said something about the improper treatments and oath breaking moments.¹⁸⁵

What is striking about the usage of “treatment” as a term to describe the conduct is that it persists as a descriptive word even after it is associated with criminal conduct and trauma. Juxtaposing the use of the terms “treatment” versus “abuse” reveals the difficulty in separating the two. VIS illuminate how Nassar's efforts to

¹⁸⁰ Brooke Hylek, INOUROWNWORDS.US (Aug. 29, 2018), <https://inourownwords.us/2018/08/29/brooke-hylek/> (emphasis and underline added).

¹⁸¹ Charla Burill, INOUROWNWORDS.US (Aug. 24, 2018), <https://inourownwords.us/2018/08/24/charla-burill/> (emphasis and underline added).

¹⁸² Clasina Syrový, *supra* note 140 (emphasis and underline added).

¹⁸³ Nicole Soos, INOUROWNWORDS.US (Aug. 7, 2018), <https://inourownwords.us/2018/08/07/nicole-soos/> (emphasis and underline added).

¹⁸⁴ Jeanette Antolin, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/jeanetteantolin/> (emphasis and underline added).

¹⁸⁵ Alexis Moore, INOUROWNWORDS.US (Aug. 6, 2018), <https://inourownwords.us/2018/08/06/alexis-moore/> (emphasis and underline added).

package his criminal sexual misconduct around a medical treatment made it harder to name the conduct and report it as criminal or inappropriate, again suggesting policy and law reforms for further study.

3. Naming the Conduct as Sexual Assault or Rape

The terms “sexual {assault}” and “sexually {assault}” are used substantially more frequently in the VIS (85 instance and 55 instances, respectively) than {rape}, which appears only three times. Though “sexual assault” is much less frequent than “sexual abuse,” its usage is quite similar, with variation in proportions of usage. Whereas “sexual abuse” was most frequently used to describe (systemic) issues more broadly, with less frequent emphasis on the personal experiences of victims, the reverse is true of “sexual assault.”

The term “sexual assault” is most often used in the context of revelations, realizations, reckonings, and awakenings as victims came—over time—to process what was happening or had happened to them as sexual assault, as opposed to (for instance) uncomfortable medical experiences. For some, this realization occurred during the criminal proceedings (see line 43).¹⁸⁶ In other instances, this retroactive realization was rooted in erroneous cultural or socially entrenched misunderstandings of what sexual assault is (line 44) and in the young age of the athletes (line 45). For example, several victims contrast their experiences with the conceptions of sexual assault that they had developed from media¹⁸⁷ and their disbelief that this could be them (line 46).

43. Then in 2016 I was finally able to put the pieces of the puzzle together and realize that my worst fear was true. What I hoped was a legitimate medical procedure was, in fact, a *sexual assault*.¹⁸⁸

¹⁸⁶ See, e.g., *Marie Anderson*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/marie-anderson/> (emphasis added).

¹⁸⁷ *Katherine Gordon*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/katherine-gordon/> (“At least that’s what it’s like in movies, t.v. shows, the news. It’s never the celebrity of a doctor that you’ve been going to for years. It’s never the man you trust and, frankly, pity. It’s never a revolutionary new medical procedure that might feel funny. At least that’s not what we’ve been taught to believe.”); *Sterling Riethman*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/29/sterling-riethman/> (“For the longest time, and similar to what a lot of other survivors said, I struggled to accept the fact that I am a survivor of sexual assault. As cliched as it may be, I had grown up watching countless episodes of Law and Order SVU. I was an SVU pro. I was binge watching Law and Order before it was a thing. I was confident I would never be one of those.”).

¹⁸⁸ *Kaylee Lorincz*, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/29/kaylee-lorincz/> (emphasis and underline added).

44. . . . [g]rowing up *sexual assault* was a vague and distant topic. Young girls are taught to believe that it's easily recognizable. It is the rough man yelling profanities.¹⁸⁹
45. I had no idea what he was doing and that it was *sexual assault or any type of abuse*. As a 16 year old I had never been touched in this way before.¹⁹⁰
46. . . . again, this reckoning with the idea that I'm a victim of *sexual assault* has been excruciating, unexpected, and has blind-sided me.¹⁹¹

The revelation that the conduct was a “sexual assault” comes from the intentional deception and coercion of Nassar and his accomplices. As noted in analysis of “sexual abuse,” many of the references to “sexual assault” arise in connection to holding other entities accountable beyond the criminal sentencing of Larry Nassar (see line 47), including identifying injustices and institutional failures that fostered the environment of abuse (line 48). Rachel Denhollender, for example, addressed USAG and MSU in her VIS stating unequivocally that those organizations’ “failures led to my sexual assault.”¹⁹²

47. Michigan State University, the school I loved and trusted, had the audacity to tell me that I did not understand the difference between *sexual assault* and a medical procedure.¹⁹³
48. When Kyle Stephens’ parents reported Larry’s *sexual abuse* of their daughter to an MSU psychiatrist and he brought Larry in to talk to her parents instead of reporting as he was mandated to do by law, was it the right way or the wrong way to handle a report of sexual assault on MSU’s campus?¹⁹⁴

¹⁸⁹ Katherine Gordon, *supra* note 187 (emphasis and underline added).

¹⁹⁰ Amy Labadie, *supra* note 128 (emphasis and underline added).

¹⁹¹ Victim 10, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/victim-10/> (emphasis and underline added).

¹⁹² Rachel Denhollender, *supra* note 133 (“I did not know that at the same time Larry was penetrating me, USAG was systematically burying reports of sexual assault against member coaches in a file cabinet instead of reporting them, creating a culture where predators like Larry and so many others in the organization up to the highest level coaches were able to sexually abuse children, including our Olympians, without any fear of being caught.”).

¹⁹³ Amanda Thomashow, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/amanda-thomashow/> (emphasis and underline added).

¹⁹⁴ Rachel Denhollender, *supra* note 133 (emphasis and underline added).

VIS used the term “sexual assault” with moderate frequency to describe Nassar’s conduct. These usages, though, depict challenges that they experienced using that description for Nassar’s conduct. The analysis shows that such uses of “sexual assault” never occur within narratives describing the crimes as they occurred contemporaneously. Rather, victims deploy this term looking back on the events from a fresh understanding or perspective. This indicates that the women did not conceptualize these events as sexual assaults until much later, up to and including the time of sentencing.

By contrast, {rape} is the least frequent framing to describe Nassar’s conduct, occurring just seven times in the entire corpus, only three of which are in relation to the crimes. “Rape” is never used unequivocally to describe and label Nassar’s conduct. Rather, it is used in a serial list of categories of misconduct. Katherine Payne is the only victim of the 140 represented in the corpus to squarely describe her conduct as “rape” (see line 49). One other woman explained getting a rape kit,¹⁹⁵ another described having nightmares about being raped,¹⁹⁶ and another noted a statistic about the number of women who are raped.¹⁹⁷ Payne uses her VIS to identify and label her own experience, but also to expand this characterization to cover all victims (line 50). This assertion is followed by a broader message of solidarity with other victims inclusively and holistically (line 51).

49. . . . my sister . . . and I . . . were sexually molested and *raped* as children by the person who sits before us today. . . .¹⁹⁸
50. We are women and children. We are victims of pain and suffering from *rape*, sexual molestation, and sexual assault.¹⁹⁹
51. . . . when the pain feels inescapable and you feel the loneliness and hopelessness that results from *rape*, sexual assault, sexual abuse, and abuse of any type, we are all here with you and for you.²⁰⁰

¹⁹⁵ Brianne Randall, *supra* note 171.

¹⁹⁶ Madeline Johnson, *supra* note 159.

¹⁹⁷ Morgan Margraves, INOUROWNWORDS.US (Aug. 24, 2018), <https://inourownwords.us/2018/08/24/morgan-margraves/>.

¹⁹⁸ Katie Payne, INOUROWNWORDS.US (Aug. 10, 2018), <https://inourownwords.us/2018/08/10/katie-payne/> (emphasis and underline added) (Payne’s statement was delivered by her mother on her behalf).

¹⁹⁹ Sterling Riethman, *supra* note 187 (emphasis and underline added).

²⁰⁰ Katie Payne, *supra* note 198 (emphasis and underline added).

These challenges naming and categorizing the criminal conduct reveal important lasting takeaways.²⁰¹ Communities offer child abuse hotlines and rape crisis centers, but what if the alleged conduct sits fluidly across categories or is not understood as both contemporaneously?

C. Describing the Harms

VIS are a tool to convey criminal harms to the court. This section explores how VIS define the harms victims suffered. It first explores the methodologies used in this section and then applies that methodology to analyze physical harms, emotional harms, and chronic harms.

1. Criminal Harms

The central goal of the VIS is to describe harms.²⁰² The Michigan statute directs victims to provide “[a]n explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.”²⁰³ As a frame of comparison, this analysis considers how the Centers for Disease Control (CDC) characterize harms for sexual violence and child abuse.²⁰⁴ This CDC schema offers a structure to analyze the VIS.

The CDC categorizes the harms of sexual violence as physical (which it defines as “bruising and genital injuries”) and psychological (which it defines as “depression, anxiety and suicidal thoughts”).²⁰⁵ It also describes how sexual violence can cause “chronic” harms (such as post-traumatic stress disorder (PTSD) and gastrointestinal problems) and “negative health behaviors”²⁰⁶ (such as smoking, drug use, and “risky sexual activity”).²⁰⁷ Sexual violence can also impact personal relationships, economic well-being, job performance, and “a sense of normalcy.”²⁰⁸

²⁰¹ See, e.g., MILLER, *supra* note 58, at 29 (“I had no room for words such as *rape*, *victim*, *trauma* *abrasions*, *attorneys* in the world I was trying to build.”).

²⁰² MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (2018).

²⁰³ § 780.763(3)(a).

²⁰⁴ CTRS. FOR DISEASE CONTROL & PREVENTION, PREVENTING SEXUAL VIOLENCE (2020), https://www.cdc.gov/violenceprevention/pdf/sv/SV-factsheet_2020.pdf [hereinafter PREVENTING SEXUAL VIOLENCE].

²⁰⁵ *Id.* at 2.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

The CDC separately categorizes the harms of child abuse and neglect.²⁰⁹ The harms of child abuse can include “immediate physical injuries such as cuts, bruises, or broken bones, as well as emotional and psychological problems, such as impaired socio-emotional skills or anxiety.”²¹⁰ Child abuse can “have a tremendous impact on broader lifelong health and wellbeing outcomes if left untreated,” such as “future violence victimization and perpetration, substance abuse, sexually transmitted infections, delayed brain development, reproductive health problems, involvement in sex trafficking, non-communicable diseases, lower educational attainment, and limited employment opportunities.”²¹¹ These categories provide a frame of reference for the analysis below.

2. Methodology

To create an inventory of lexical items used to communicate criminal harms, the entire corpus of VIS has been semantically tagged using the University Semantic Annotation System in Wmatrix (see Part III).²¹² Items tagged under categories B (THE BODY AND THE INDIVIDUAL), E (EMOTIONAL ACTIONS, STATES, AND PROCESSES), and X (PSYCHOLOGICAL ACTIONS, STATES, AND PROCESSES) were selected for scrutiny as these create meanings in alignment with the purpose of VIS. We analyzed the most common items (words appearing with frequencies over 20) in these semantic categories.

Some items meeting these threshold criteria were excluded from analysis. For example, a high number of body words (e.g. *ankle*, *shoulder*, *hip*, *back*, etc.) did feature in the list, but upon inspection, these had to do with the initial reason for seeking medical care, rather than description of the abuse. As these terms form a pre-crime narrative rather than contributing to descriptions of harm, they will not be closely examined. Likewise, items used in a purely metaphorical sense (“heart,” “face”) do not fall under descriptions of harms and have been discarded.

²⁰⁹ CTRS. FOR DISEASE CONTROL & PREVENTION, PREVENTING CHILD ABUSE & NEGLECT (2019), <https://www.cdc.gov/violenceprevention/pdf/CAN-factsheet.pdf> [hereinafter PREVENTING CHILD ABUSE & NEGLECT] (dividing sexual abuse categories into “pressuring or forcing a child to engage in sexual acts” with “behaviors such as fondling, penetration, and exposing a child to other sexual activities”).

²¹⁰ *Id.* at 2.

²¹¹ *Id.*

²¹² WMATRIX, *supra* note 110; *see supra* Part III.

| Category | Items [frequency] |
|---------------------------------|--|
| ANATOMY AND PHYSIOLOGY | <i>body</i> [134], <i>hands</i> [65], <i>finger</i> [71], <i>sleep</i> [50], <i>vagina</i> [48] |
| HEALTH AND DISEASE | <i>pain</i> [408], <i>hurt</i> [183], <i>sick/sickening</i> [88], <i>ill</i> [29], <i>scars</i> [24] |
| MEDICAL TREATMENT | <i>heal</i> [160], <i>massage</i> [43] |
| CLOTHES AND PERSONAL BELONGINGS | <i>shorts</i> [45], <i>wear</i> [38], <i>gloves</i> [34] |

Table 6: Words expressing physical harm (minimum frequency 20), categorized semantically.

Items keying emotional and psychological harm (as opposed to physical harm) will be discussed together. Table 7 presents a categorized list of these words with their frequencies.

| Category | Items [frequency] |
|---------------------|--|
| EMOTIONAL PROCESSES | <i>trust</i> [290], <i>suffer</i> [81], <i>live with</i> [31], <i>cry</i> [67] |
| EMOTIONS | <i>fear</i> [78], <i>afraid</i> [69], <i>scared</i> [64], <i>confused</i> [42], <i>sad</i> [35], <i>anger</i> [31] |
| EMOTIONAL DISORDER | <i>anxiety</i> [95], <i>depression</i> [52], <i>trauma</i> [38], <i>{suicide}</i> [24] |
| COGNITIVE CONCEPTS | <i>dream</i> [61], <i>nightmare</i> [58], <i>memory</i> [35] |

Table 7: Words expressing emotional and psychological harm (minimum frequency 20), categorized semantically.

The statute governing VIS organizes the categories of damages on which a victim might comment around physical, psychological, and emotional harm.²¹³ This section proceeds in a similar organizational structure, but ultimately reveals threshold issues of categorization and labeling as an area for future legal reform.

3. Physical Harms

The VIS statute directs victims to testify about the physical harms they have suffered.²¹⁴ In a crime like a non-sexual assault or battery, there may be bruises or cuts. In a penile rape, other possible physical harms would be pregnancy, sexually transmitted diseases, tearing, and cuts. In this particular corpus, though, physical harms are not a predominant theme.

While the narratives certainly depict graphic accounts of sexual abuse involving penetration of the “vagina” [freq. 48] and “anus” [freq. 7] using the “hand” [freq. 65] or “finger” [freq. 71], describing this contact through the lens of “physical,

²¹³ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

²¹⁴ *Id.*

psychological, or emotional harm or trauma” framed in the VIS presents linguistic challenges for further analysis. Some women described feeling “pain” during this penetration (line 52) or being “sore” as a result (line 53). Lines including “pain” [freq. 367], and “hurt” [freq. 192] are the most explicit expressions of physical harm deriving from the criminal conduct.

52. He slid his ungloved *hand* up my leg and back into the most innocent part of my body, and I felt searing pain. For 30 minutes he inserted his *fingers* into me and grunted while I lay there terrified.²¹⁵
53. I would come in, lay on the table, and you would digitally penetrate me until I was *sore* and raw. I would emotionally withdraw from my body as a means to cope. I felt I was watching myself as if I was floating above the table. I never wanted to say that I was sore or that you were hurting me because I desperately wanted to return to gymnastics.²¹⁶

The predominant focus of the VIS corpus is not in reporting physical harms but rather in how the physical acts led to psychological harm or trauma. These points are important to law and policy for several reasons. These articulations of harm reveal weaknesses in reporting mechanisms to identify and to intervene in misconduct sooner. They reveal challenges in bringing civil suits for personal injury. They reveal gaps in victim services generally.

Variations of the word {massage} [freq. 43] are used to describe the harm, of which, nearly all are describing “massaging” of the “vagina,” “breasts,” “anus,” and “buttocks” (see line 54). This language reveals the challenges of language in describing sexual misconduct involving minors. The organization End Violence Against Women International published insightful *Suggested Guidelines on Language for Sexual Assault*.²¹⁷ This publication highlights that language depicting consent, like “massaging,” should be avoided in describing acts of abuse “because [these terms] convey a degree of mutual consent and/or minimize the seriousness of the acts.”²¹⁸ Finding replacement words is a challenge, though. Other words in the

²¹⁵ *Emily Morales*, INOUROWNWORDS.US (Aug. 28, 2018), <https://inourownwords.us/2018/08/28/emily-morales/> (emphasis and underline added).

²¹⁶ *Marta Stern*, *supra* note 175 (emphasis and underline added).

²¹⁷ KIMBERLY A. LONSWAY & JOANNE ARCHAMBAULT, END VIOLENCE AGAINST WOMEN INT’L, SUGGESTED GUIDELINES ON LANGUAGE FOR SEXUAL ASSAULT (2013), <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=1219>.

²¹⁸ *Id.* at 4–5.

corpus like {molest} [freq. 68], {violate} [freq. 44], and {grobe} [freq. 3] may be more factually accurate objectively—in retrospect—to describe Nassar’s conduct.

54. He proceeded to penetrate me vaginally and *massage* my breasts.²¹⁹

These language usages reveal the challenges of victim accounts of abuse and the limits of language. Finding words that give voice to victims’ experience often involves recharacterizing the acts for the victims themselves. What once seemed like a medical treatment is transformed into misconduct. What once was understood as massage reveals itself as assault. Physical harms like cuts, bruises, and tearing are not the dominant theme of the VIS corpus. Though the language of physical harm is present, many of the VIS use these lexis metaphorically to represent psychological or emotional harms, such as bearing “scars” [freq. 24] or “wounds” [freq. 7] or feeling “sick” / “sicken” / “sickening” [freq. 88].

The challenge sits in giving accounts of psychological and emotional harms that derive from the physical contact. This is explored in the next section.

4. Pain and Hurt: A Hybrid of Physical, Psychological, and Emotional Harm

For sexual abuse victims, the line between physical harm and psychological harm is interconnected in important ways. The VIS statute seeks accounts of damages by category,²²⁰ but the fluidity and interconnectivity merits further discussion in law and policy.

The most frequent framing of harm in the VIS are the terms “pain” [408 freq.] and “hurt” [183]. These terms communicate a hybrid of physical, psychological, and emotional harm. Ordinarily, “pain” and “hurt” would derive from physical injuries. While “pain” is a very common theme of the VIS, it is paradoxically used most often to describe *how* and *why* the athletes ended up under Nassar’s care in the first place.

When “pain” appears in relation to the criminal misconduct, the VIS describe an ambiguous collection of harms (line 55). Some victims are quite explicit in communicating to the court how very difficult it is to communicate what pain *is* and how it is experienced by victims (line 56). This complexity is notable because, in many ways, it is the core goal of the VIS. Articulating the lasting pain and ongoing

²¹⁹ Brianne Randall, *supra* note 171.

²²⁰ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

effects of sexual assault is a heavy burden with which the survivors candidly struggled.

55. I give the *pain*, the hurt, the guilt, the shame, the feeling of betrayal, and the anger to God.²²¹
56. It's hard telling someone about the *pain* you caused me that hasn't happened to them.²²²

The VIS also express anxieties and awareness about the “pain” of others. They reflect concern regarding the “pain” their own victimization would bring to their families and how that derivative “pain,” in turn, would deepen their own (line 57). They describe watching the collateral harms of their loved ones and the complexities of these intersections (line 58). They express anticipatory worry about the possibility of the victimization of their own children or others (line 58).

57. I was not ready to tell my family, to tell them their only daughter and their only sister had been sexually assaulted for more years than she had been alive. If I told them that, I would have to see the fear on their faces and the pain in their eyes and mine would multiply by 10.²²³
58. What I can't do is take the *pain* away from my mom. I can't make it better. The regrets that she holds are damaging. The relationship that we have now is fragmented. She wants to talk about it to help *heal*—her *healing* process but I don't.²²⁴
59. My deepest pain and fear was the thought of my two young daughters ever being hurt like this.²²⁵

They also depict “pain” as a tool of healing in at least two very dissonant ways. On the one hand, they express strength from the collective experiences of “pain” as a community (line 60) and attribute value to this “pain” if their suffering might serve

²²¹ *Carrie Hogan*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/carrie-hogan/> (emphasis and underline added).

²²² *Arianna Guerrero*, *supra* note 176 (emphasis and underline added).

²²³ *Kayla Spicher*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/kayla-spicher/> (emphasis and underline added).

²²⁴ *Victim 142*, INOUROWNWORDS.US (Aug. 24, 2018), <https://inourownwords.us/2018/08/24/victim-142/> (emphasis and underline added).

²²⁵ *Olivia Cowan*, INOUROWNWORDS.US (Aug. 6, 2018), <https://inourownwords.us/2018/08/06/olivia-cowan/> (emphasis and underline added).

to protect others (line 61). On the other extreme, some VIS comment in the sentencing context on the “pain” that is forthcoming to Nassar (line 62).

60. Although I was young and felt foolish to fall for your abusive powers, I also find strength in this community of women. It is the depth of our struggle, the depth of our *pain*, but also the depth of our strength. The distance between us is irrelevant. We have come to end your abuse and, in fact, we have.²²⁶
61. If all of us survivors’ *pain* and *suffering* prevents and protects other children, then it will not be wasted.²²⁷
62. I hope you get to feel this *pain* for the rest of your life. I hope someone does to you what you did to us for the rest of your life.²²⁸

“Hurt” is also a frequent way to describe the harms [freq. 183]. Like “pain,” “hurt” was sometimes used to describe *physical* “hurt” leading directly from the conduct (see line 63). However, it was often used more broadly as an umbrella term to capture harm *beyond* physical pain (line 64). The “hurt” was often depicted as systemic, enduring, and widespread, couched in a sense of irony due to this harm being enacted by a doctor (line 65). Like with “pain,” the VIS reflect comfort in knowing that Nassar cannot “hurt” anyone else (line 66).

63. I would cry. I would cry because it *hurt*. It felt like he was ripping my vagina apart. He would say, I know it hurts. Yes, it did *hurt*. With my mom in the room he would perform these treatments. He would see tears leaking out of my eyes and make comments.²²⁹
64. My heart *hurts*. My body *hurts*. My mind *hurts*. My family *hurts*. My entire life has been affected.²³⁰
65. Instead, you took it upon yourself to violate me in a way that has changed my view on everything. And not once, but multiple times. Due to the fact that I was young and there was no way that a doctor would hurt me—you

²²⁶ Anna Dayton, INOUROWNWORDS.US (Aug. 28, 2018), <https://inourownwords.us/2018/08/28/anna-dayton/> (emphasis and underline added).

²²⁷ Victim 55, INOUROWNWORDS.US (Aug. 7, 2018), <https://inourownwords.us/2018/08/07/victim-55/> (emphasis and underline added).

²²⁸ Arianna Guerrero, *supra* note 176 (emphasis and underline added).

²²⁹ Clasina Syrovyy, *supra* note 140 (emphasis and underline added).

²³⁰ Larisa Boyce, *supra* note 163 (emphasis and underline added).

did, in fact, *hurt* me emotionally and physically, and that's something that I can't forget.²³¹

66. And now over 140 women have bravely come forward, not only for ourselves but to ensure that you can never *hurt* another child or destroy another family again.²³²

5. Chronic Harms

Many of the VIS depict harms that fall under the “chronic” category the CDC uses to describe the harms deriving from child sexual abuse.²³³ This category of chronic harms notably does not exist in the CDC framework describing the harms of sexual violence.²³⁴ The chronic harms depicted in the VIS are physical, psychological, and emotional hybrids, which may escape capture in both law and public health frameworks.

Whereas the CDC definition explicitly lists clinical examples of chronic harm, relatively few VIS name these symptoms precisely in these terms. Just fourteen VIS explicitly describe PTSD [freq. 9] or post-traumatic stress disorder [5]. Many others do not explicitly categorize their harm as PTSD but they nonetheless describe symptoms that could be associated with PTSD, such as “sleep” disturbances [44], “panic attacks” [34], “flashbacks” [23], and “suicidality” [13]. This suggests areas for reform.

Most commonly, the VIS describe how the criminal conduct has affected their ability to {sleep} [freq. 44] and encounters with sleep interruptions (e.g. “wake up” [freq. 27]). There are 41 instances of victims describing how they cannot sleep soundly. They sleep too much; they sleep too little; they have disturbed sleep; and they deploy various strategies to sleep (e.g., sleeping with lights on). These accounts poignantly position sleep disturbances as a hybrid of physical, psychological, and emotional harm, reflecting the complex intersections of psychological and physiological harms (line 67). “Sleep,” for some, explains how they cannot escape the harms whether conscious or not (see line 68). Two instances gesture to Nassar, questioning how *he* can “sleep,” hoping that his rest is similarly disturbed (line 69).

²³¹ *Nicole Walker*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/nicole-walker/> (emphasis and underline added).

²³² *Jamie Dantzcher*, *supra* note 169 (emphasis and underline added).

²³³ PREVENTING CHILD ABUSE & NEGLECT, *supra* note 209.

²³⁴ PREVENTING SEXUAL VIOLENCE, *supra* note 204.

67. Migraines, depression, panic attacks, PTSD, insomnia, and nightmares. I, too, have woken up drenched in sweat. I, too, have woken up crying in the middle of sleeping having a nightmare of the abuse I endured, nightmares of MSU silencing me over and over and over again.²³⁵
68. Over the last year I have cried more nights than not and I have experienced flashback nightmares of the abuse. I've woken up from such bad nightmares that I vomit.²³⁶
69. I still can't sleep at night, and I hope that Larry can't either.²³⁷

By their very nature, chronic harms also endure temporally. Lines containing “live with” or “live in” (lines 70 and 71) reveal how speakers construct their new identities as victims grappling with long-lasting or lifelong harm. The “victim identity” intersects with and interrupts other identities, such as those of wife, mother, and medical patient. Victims describe difficulties maintaining personal relationships, seeking medical attention, and receiving physical therapies (line 72). The true and lasting impact of this harm appears immeasurable. For example, one victim queries how her academic performance might have improved had she not experienced anxiety in the presence of male teachers (line 73).

70. Every day I have to *live with* the consequences of something that I had no control of. I have suffered from *depression, anxiety, tremendous guilt, embarrassment, and even suicidal thoughts*. It has been so difficult for me to get a good night's sleep without seeing your face in my dreams.²³⁸
71. I now *live in fear, darkness, sadness, and pain*. The craziest part is that I am ashamed that I was assaulted and have carried that shame with me.²³⁹
72. It has caused a lot of *anxiety, depression, recurrent nightmares, and a lack on my personal relationships*. One of the major issues that has occurred recently is that I have—I have always had *anxiety* when being around male doctors but it has gotten exponentially worse If I'm unable to

²³⁵ Larissa Boyce, *supra* note 163 (emphasis and underline added).

²³⁶ Olivia Cowan, *supra* note 225 (emphasis and underline added).

²³⁷ Lyndsey Gamet Carr, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/lyndsey-gamet-carr/> (emphasis and underline added).

²³⁸ Alexis Alvarado, *supra* note 124 (emphasis and underline added).

²³⁹ Kassie Powell, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/10/kassie-powell/> (emphasis and underline added).

see a female physician, I generally have intense *anxiety* leading up to and during the exam.²⁴⁰

73. In the seventh and eighth grade I felt extremely uncomfortable around my male teachers. I avoided them. I hated talking to them, and I would feel panic if I was ever alone with them in a room. Back then I didn't understand why I felt this way because all my peers loved our teachers, but being assaulted affected my relationship with my teachers and my *anxiety* was so intense that it made it hard to focus and learn at school. I also developed an intense fear of male hands, like a PTSD response. Now I get flashbacks when I see male hands and it makes me feel *scared* and threatened.²⁴¹

The VIS depict harms that are difficult to capture or quantify (line 74). Victims experienced both immediate and lasting psychological harm, often with physical side effects (lines 75–76). Response triggers for these emotional and physiological harms are also present in the VIS. For instance, victims describe lasting discomfort in their physical selves (line 77) and an inability to function without medication due to lasting harm (line 78). As detailed in Section IV.A., conceptualizations of Nassar as a doctor persevere even in light of his criminal behavior. For instance, one victim describes the impact that Nassar's (improper) medical advice has had on her choices and behaviors (line 79).

74. As I sit here today I am still *suffering back pain*, and being a junior in high school I should be signing for a scholarship, but Larry Nassar took that away from me.²⁴²
75. And the physical pain. I never knew that *stress* and *anxiety* could cause so much physical pain. My neck and upper back are literally tied up in knots causing excruciating headaches and neck pain. When the *anxiety* gets so bad there's an ache that takes over my mid back area.²⁴³

²⁴⁰ *Amanda Cormier*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/07/amanda-cormier/> (emphasis and underline added).

²⁴¹ *Jessica Thomashow*, INOUROWNWORDS.US (Aug. 6, 2018), <https://inourownwords.us/2018/08/06/jessica-thomashow/> (emphasis and underline added).

²⁴² *Arianna Guerrero*, *supra* note 176 (emphasis and underline added).

²⁴³ *Carrie Hogan*, *supra* note 221 (emphasis and underline added).

76. As a result of your abominable actions, my family has had to watch me deteriorate. They were helpless as the long term effects of what you did to me that week when I was just 15 years old took hold of my life. For years I cut myself off. For years I bled. For years the *anxiety* was crippling. For years I threw up. For years I subjected myself to abusive relationships all the while believing I did not deserve better. For the majority of my adult life I wanted to die and thought seriously about suicide.²⁴⁴
77. Doctor Nassar commented on asymmetries of my body during his assault to me. Every day when I see my body I am reminded of his words which then remind me of the assault. I relive the pain and trauma every time I shower, use the bathroom, or undress. It is something that never goes away.²⁴⁵
78. My OB agreed to let me take a safer antidepressant but I still was not going to be able to take my anxiety medication while pregnant. Even though I knew I couldn't take it while pregnant, I wasn't able to stop taking it to prepare for pregnancy. I could not exist day-to-day without something to ease my anxiety.²⁴⁶
79. I am now 27 years old and I have been *scared* to have children for the last seven years because after one of our appointments you told me that I shouldn't ever have children naturally because I was too small down there.²⁴⁷

This section reveals that the victims' harms do not fit into carefully constructed legal boxes of categorized harms (e.g., physical, psychological). Some of the deepest and most sustained harms would not fit in any category, like individual and institutional betrayals of trusted parties and harmed relationships with spouses, partners, and families. Other harms might necessitate entirely new categories to better align with the lived language of survivors such as physiological harms (e.g.,

²⁴⁴ Jessica Howard, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/28/jessica-howard/> (emphasis and underline added).

²⁴⁵ Erin McCann, INOUROWNWORDS.US (Aug. 24, 2018), <https://inourownwords.us/2018/08/24/erin-mccann/> (emphasis and underline added).

²⁴⁶ Nicole Reeb, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/nicole-reeb/> (emphasis and underline added).

²⁴⁷ Amanda McGeachie, INOUROWNWORDS.US (Aug. 29, 2018), <https://inourownwords.us/2018/08/29/amanda-mcgeachie/> (emphasis and underline added).

sleep disturbances). What words describe the institutional betrayals of enabling and fortifying Nassar's power? This section reveals limits to the language of harm, perhaps suggesting a shift entirely to looking at the "wrongs" as well as the "harms."

This analysis also raises further questions regarding what tools of justice and healing—outside of the criminal justice system—might meet the full range of criminal harms.²⁴⁸ Might restorative justice play a role here in helping victims work through the harms perpetrated by the institutional stakeholders and sports communities particularly?²⁴⁹ Might family mediation be an important response as families process harms to their children and victims navigate their own marriages and families?²⁵⁰

It also raises questions for further research in how biases and narrow scripts of which harms "count" risk privileging certain survivor communities over others.²⁵¹ This critique sits squarely in the Nassar case because the Judge oversaw a trial involving serial sexual assault of young, elite, athletes only to seemingly accept and normalize the fact that 200,000 people a year are sexually assaulted in prison and that this might be inevitable for Nassar.²⁵² This sentiment suggested that one

²⁴⁸ See, e.g., Mimi E. Kim, *Anti-Carceral Feminism: The Contradictions of Progress and the Possibilities of Counter-Hegemonic Struggle*, 35 *AFFILIA* 309, 316 (2019) ("While pitched as an alternative to the machinery of mass incarceration, restorative justice programs are often initiated from within or in close collaboration with the criminal legal system, leaving its assumptions, its personnel, and its program design within the logic and institutions of the carceral state."). There are real dangers of co-optation embedding restorative justice in the criminal legal system. *Id.* at 317. "Restorative justice proponents have challenged the retributive focus of the criminal legal system, but their proposed solutions often offer diversionary options that still remain within the criminal legal system." *Id.* at 319. Judge Aquilina, for example, spoke at a conference at the University of Kansas describing her oversight of the VIS as a form of restorative justice. See KU Law, *Using Restorative Justice in Victim Impact Statements*, YOUTUBE.COM (Apr. 1, 2019), <https://www.youtube.com/watch?v=D-cQpAjQJ-0>.

²⁴⁹ Restorative justice is a cooperative process involving broader stakeholders committed to repairing harm caused by criminal behavior. Annalise Buth & Lynn Cohn, *Looking at Justice Through A Lens of Healing and Reconnection*, 13 *NW. J.L. & SOC. POL'Y* 1, 2 (2017). In the Nassar case, this might include mediation or community meetings with the gym, the university, the Olympic Committee.

²⁵⁰ See, e.g., MILLER, *supra* note 58, at 294 ("The rows of parents in the audience, sunken and solemn. Rarely do we see the second ring of effect, this sharp contrast between the mighty, forceful daughters, and the sadder echo of their loved ones, insides undone.").

²⁵¹ See, e.g., *id.* at 219 ("Perhaps [the Probation Officer] expected a hysterical victim, the weeping and scathing kind.").

²⁵² See, e.g., Alex Press, *#MeToo Must Avoid "Carceral Feminism,"* VOX (Feb. 1, 2018, 8:40 AM), <https://www.vox.com/the-big-idea/2018/2/1/16952744/me-too-larry-nassar-judge-aquilina-feminism> ("Aquilina's barely concealed reference to prison rape—an epidemic to which an estimated 200,000

community of victims “counted” and the other did not in deeply problematic ways. In this case, many harm narratives were framed through the lens of athletes, marriages, success, and dreams within the context of elite sporting. In this historic moment, vigilance is essential to crafting law and policy that address the broad range of institutional sexual abuse and misconduct so as to not reify the exact biases and limits that constrained the Nassar victims.

6. Contextualizing Harms

The VIS may also include several contextual points that enable the women to understand and process Nassar’s actions and how his crimes affected their lives. Material objects may appear in VIS as symbols that “convey broader spatial and temporal effects through the experience of an individual.”²⁵³ An object can be a tool for the victim to help the audience “simultaneously, and intuitively, apprehend a number of individual and collective truths about the violence.”²⁵⁴ For example, a passenger’s suitcase damaged by shrapnel in an airplane bombing case might depict the anticipation of travel, create connection to others who mundanely packed a suitcase planning to return home, and metaphorically represent the permanently damaged lives of the bombing victims.²⁵⁵ An object can hold past and present for the victim, allowing the audience to understand the defendant’s harms against the victim’s past, present, and future.²⁵⁶

The role of “gloves” in the VIS is a powerful example of contextualizing harm. Nassar’s failure to use “gloves” is referenced 34 times in the VIS corpus. Failure to use gloves is not relevant to defining an adult digitally penetrating a minor. There is no legal mechanism by which the minor could have consented to the conduct—with or without gloves or lubricant.²⁵⁷ Yet, it is an emphatic point (line 80) made in the VIS (line 81). It is also a symbolic point denoting a complex breach of boundaries.

people in the US are subjected every year—calls our attention to a tension in the #MeToo moment: its relationship to the criminal justice system.”).

²⁵³ *Reverberations*, *supra* note 38, at 1267.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 1267.

²⁵⁶ *Id.* at 1268.

²⁵⁷ See MICH. COMP. LAWS ANN. § 780.520b (West 2020). This section of Michigan’s Penal Code lays out the elements of criminal sexual conduct in the first degree and does not create an exception for consent regarding conduct with a minor. It states: (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists: (a) That other person is under 13 years of age; or (b) That other person is at least 13

80. He pushed his fingers inside me without gloves, lubrication, without informing me or my mom about what he was going to do.²⁵⁸
81. I trusted what he was doing at first but then he started touching me in places I really didn't think he should. He didn't have gloves on. He didn't have gloves on.²⁵⁹

The failure to wear gloves, even if not legally dispositive, is central to many of the victim's articulation of harms and betrayals. For a few VIS, not wearing gloves involved explicit harms, or risks of harms, such as sanitation (line 82), infection (line 83), and health standards (line 84). For other victims, lack of gloves was a detail critical to telling how invasive his conduct was (line 85) and how deeply this harm was experienced (line 86). The gloves function as an actual risk and as a metaphor for the deep, violating intrusion of body and mind—past, present, and future.

82. Larry Nassar, you sexually, mentally, and physically abused me hundreds of times without gloves, lubricant, or proper sanitation.²⁶⁰
83. I ended up getting a bacterial infection after he did this one of the times because he put his fingers from my anus to my vagina without *gloves*. He never wore *gloves* when he did this.²⁶¹
84. And when you stuck your fingers inside me, why did you never once wear *gloves*, which is against OSHA standards and therefore subjected me, you, other patients, and the community to infectious diseases?²⁶²

but less than 16 years of age and any of the following: (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable (among other circumstances that would be applicable in the Nassar case). Furthermore, under Michigan law, "consent must be given by one who is legally capable of giving consent to the act." *People v. Starks*, 701 N.W. 2d 136, 141 (Mich. 2005) (holding alleged consent of 13-year-old complainant was not defense to the instant charge of intent to commit criminal sexual conduct involving sexual penetration).

²⁵⁸ *Morgan Valley*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/29/morgan-valley/> (emphasis and underline added).

²⁵⁹ *Maggie Nichols*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/maggie-nichols/> (emphasis and underline added).

²⁶⁰ *Kaylee McDowell*, *supra* note 173 (emphasis and underline added).

²⁶¹ *Amy Labadie*, *supra* note 128 (emphasis and underline added).

²⁶² *Jennifer Hayes*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/jennifer-hayes/> (emphasis and underline added).

85. He was an unwarranted intruder to my most private, intimate, never before touched places without warning, without *gloves*, and without explanation.²⁶³
86. Larry Nassar sexually assaulted me by penetrating me vaginally and anally without *gloves*, lubricant, or consent. Before every appointment I cried in the bathroom and after every appointment I couldn't wait to get home to shower because I always left his office feeling so dirty, yet no amount of showers after my appointments with Larry made me feel clean at all.²⁶⁴

The role of baggy “shorts” is another element of Nassar’s predatory, grooming behavior that victims described regularly [freq. 45] in the VIS. Nassar told the athletes to “wear loose fitting shorts” to his appointments.²⁶⁵ They would later come to understand just how much that seemingly innocuous detail—the style of shorts they were instructed to wear to medical appointments—played into Nassar’s extensive abuse by allowing him access to their genital areas (line 87). Such shorts then play a symbolic and triggering role in ongoing harms, making a seemingly and formerly innocuous item of clothing part of a constellation of self-loathing (line 88).

87. I later learned Nassar wanted us to wear loose fitting *shorts* so he would have easy access to the places he wanted for his own pleasure.²⁶⁶
88. I hate wearing shorts and more than anything there are days I hate being in my own skin Larry has affected and damaged my parents which I will hate you for until the day I die.²⁶⁷

This section reveals numerous takeaways for researchers and policymakers. It reveals that the categories of harms that frame the VIS are difficult to capture in the context of rape and sexual assault. It also reveals how important it is that survivors tell their stories freely in some context, whether the VIS or another forum. Legal

²⁶³ *Megan Halicek*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/megan-halicek/> (emphasis and underline added).

²⁶⁴ *Madeline Jones*, INOUROWNWORDS.US (Aug. 8, 2018), <https://inourownwords.us/2018/08/08/madeleine-jones/> (emphasis and underline added).

²⁶⁵ *Whitney Mergens*, INOUROWNWORDS.US (Aug. 14, 2018), <https://inourownwords.us/2018/08/14/whitney-mergens/>.

²⁶⁶ *Madeline Johnson*, *supra* note 159 (emphasis and underline added).

²⁶⁷ *Taylor Cole*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/09/taylor-cole/> (emphasis and underline added).

categories and terms necessarily bucket conduct narrowly and myopically. The VIS show a more versatile fluidity across different characterizations of misconduct.

D. *Recommending a Sentence*

The content of a VIS may also include “recommendations for an appropriate sentence.”²⁶⁸ As described in Part II above, it had been widely reported that Nassar had already been sentenced to decades in prison on his child pornography and destruction of evidence charges.²⁶⁹ The question in the Eaton County proceedings was not *if* Nassar would spend time in jail, but how much *more* time. This knowledge likely liberated the VIS on the sentence recommendations.

Nonetheless, the terms “sentence,” “sentenced,” “sentences,” and “sentencing” (hereafter: {sentence}) occur 94 times in the corpus of available VIS. These items appear across 52 of the 148 statements in our corpus. Each statement contains one or two references to {sentence} in concluding remarks, with the notable exceptions of Denhollander [freq. 14] and Miller [freq. 13], who speak at length about sentencing.

Each instance of {sentence} has been coded for usage function on the basis of the surrounding co-text. The most frequent usage [freq. 52] is the expected one, with statements providing recommendations to apply the minimum or maximum allowable sentence for the crimes charged (see line 89). Another frequent usage [freq. 22] describes the process of sentencing itself, with statements regarding the previous sentence imposed by Judge Neff and ruminations about how Judge Aquilina will be able to come to her own sentencing decision (line 90).

89. I hope to take that strength to continue to work with vulnerable populations and have something come out of my pain so, Your Honor, I ask that you impose the full 125 year sentence.²⁷⁰

90. Have you *sentenced* other defendants to longer *sentences*? Your sister, Judge Neff, *sentenced* him to 60 years for a heinous crime but not as bad as to what you have been exposed to over a week.²⁷¹

This leaves 17 instances of {sentence} that do not fall under the legal framework nor guidance for VIS. In these statements, the recommended sentence is not one that is quantified in number of years, but rather qualified in terms of equity of impact across a lifetime (line 91). Victims directly address Nassar, describing

²⁶⁸ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

²⁶⁹ Hinkley & LeBlanc, *supra* note 9.

²⁷⁰ *Amanda Cormier*, *supra* note 240 (emphasis and underline added).

²⁷¹ *Emma Ann Miller*, *supra* note 164 (emphasis and underline added).

these sentences in terms of emotional impact rather than loss of liberty (line 92), and declaring him deserving of his sentence rather than making recommendations about its duration (line 93). The main subcategory of this miscellaneous set constructs sentencing as a method of sending a larger message [freq. 9]. In these, the victims often directly address Judge Aquilina, including her in the underlying narrative of the #MeToo context (line 94) and explicitly urging her decision to “send a message” (line 95).

91. Your Honor, if I have to live with this for the rest of my life, Mr. Nassar, the defendant, deserves a *sentence* that will affect him for the rest of his life, and that *sentence* should be multiplied by however many girls and women he assaulted who will also carry this for the rest of their lives.²⁷²
92. I will watch you be *sentenced* to a life of loneliness, regret, and hurt.²⁷³
93. You are sick, Larry, and you deserve the *sentence* you are about to receive.²⁷⁴
94. But this for me is not about Nassar—well, maybe a little bit. His *sentence* will for me say more about you. I know you are a mother and we have heard from a number of mothers. I know you are a lawyer and we have heard from a number of lawyers. Like you, strong successful lawyers. You have served our country in the noblest of way in the military. Some of us are or have served in the military. You have overcome and all of us, yes, all of us have overcome. I suspect that you, too, could post Me Too and all of us post Me Too.²⁷⁵
95. It demands justice, and the *sentence* you impose today will send a message about how much these precious women and children are worth.²⁷⁶

A main component of the VIS, as defined by the Michigan statute, is providing recommendations for sentencing.²⁷⁷ Prior cases had raised public awareness of the prevalence of lenient sentencing in rape and sexual assault cases.²⁷⁸ Yet, despite that

²⁷² *Chelsea Williams*, *supra* note 179 (emphasis and underline added).

²⁷³ *Taylor Cole*, *supra* note 267 (emphasis and underline added).

²⁷⁴ *Victim 183*, INOUROWNWORDS.US (Aug. 9, 2018), <https://inourownwords.us/2018/08/14/victim-183/> (emphasis and underline added).

²⁷⁵ *Emma Ann Miller*, *supra* note 164 (emphasis and underline added).

²⁷⁶ *Rachel Denhollander*, *supra* note 133 (emphasis and underline added).

²⁷⁷ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

²⁷⁸ *See Tierney*, *supra* note 59, at 344.

social and political context, mentions of {sentence} only appear in 35.1% of the VIS in our corpus, across 52 statements. Recommendations about the duration of sentence only appear in 42 of these (or 28.4% of all 148 statements). This may be due to the largely predetermined duration of the sentence or may indicate that this aspect of the VIS was not salient to these victims in this case.

V. LESSONS OF LAW AND LANGUAGE

These VIS presented a rare and unique opportunity to study the voices and language of victims describing their own harms, pain, and betrayals with an intended national audience and a deliberately constructed platform. This corpus-based discourse analysis allows for a comprehensive and objective assessment of how survivors of sexual crimes perceive themselves, how they redefine their identities and relationships with their perpetrators and enablers over time, who they hold accountable for their harms, and how they voice their harms.

This section summarizes themes for further examination. This mixed quantitative/qualitative analysis of Nassar VIS reveals several lessons for law and policy. This corpus-based discourse analysis shows that VIS might be a valuable policy-making tool outside of the criminal justice system directly when studied comprehensively. They reveal with objective clarity—outside of a politicized lens—what approaches best serve the needs of survivors and hold perpetrators accountable. It allows for exploration of whether restorative justice or public health approaches might further fill the gap created by the limits of the criminal justice system.²⁷⁹ It allows for more meaningful preventative discussions about what tools, programs, services, or laws might have averted the harms before they occurred—and before they impacted over 200 known victims.

These VIS also reveal insights worthy of further study into how perpetrators cultivate and maintain relationships with victims that effectively hide the underlying abuse and how institutions enable these behaviors.

A. *The Challenges of Naming and Framing Systemic Crimes*

This analysis repeatedly emphasized deep and systemic challenges in naming the acts that had occurred, the harms that occurred, and even the perpetrator himself. In addressing the defendant in their VIS, victims used names that reflected

²⁷⁹ MILLER, *supra* note 58, at 240–41 (“They tell you that if you’re assaulted, there’s a kingdom, a courthouse, high up on a mountain where justice can be found. Most victims are turned away at the base of the mountains, told they don’t have enough evidence to make the journey. Some victims sacrifice everything to make the climb, but are slain along the way, the burden of proof impossibly high.”).

relationships of trust, confidence, and even friendship.²⁸⁰ The word “friend” was used to describe Nassar (albeit retroactively) three times more frequently [freq. 199] than the term “defendant” [freq. 68]. This is insightful—it reveals challenges in victim healing as it relates to naming and framing the conduct and the relationship itself. The way that victims understand the conduct begins with understanding who the perpetrator *was* in relation to them contemporaneously. It works to debunk the “monster” myth in our collective consciousness of abusers.

Were the acts that Nassar committed “rape,” “sexual assault,” “sexual abuse,” “child sexual abuse,” “child abuse,” or “medical abuse”? The victims used a range of terms to describe the conduct. They revealed their struggles over meaningful and ongoing challenges in understanding and (re-)categorizing what had happened to them and defining these experiences within existing legal and social categories (e.g. “sexual assault” or “child abuse”). They had to work to reframe what they previously understood as “treatments” into a criminal category. Despite this recontextualization, victims never used the legal term, “criminal sexual misconduct.”²⁸¹ They found their own terms more flexibly.

This analysis suggests several policy takeaways. Rape crisis centers, sexual assault hotlines, victim advocates, and countless outlets for support are framed around a particularly specified and named conduct.²⁸² These services also suffer from under-utilization, particularly among certain communities (women of color, men, LGBTQ individuals).²⁸³ One powerful takeaway of the #MeToo movement was the emergence of community and solidarity *without* having to name the conduct so precisely. This solidarity has power for victims.²⁸⁴ Policymakers and community service providers could find new ways to market support services that do not rely on such narrow labeling and framing at the outset.

The victims also used a range of terms to describe the harms they had suffered. There are certain “standard” harms that are often set forth as associated with sexual assault, such as PTSD, sexually transmitted diseases, bruising, and pregnancy. The victims here raised several of these categories of harms. The victims also found words to adequately voice the breach of trust they experienced and its violating

²⁸⁰ See, e.g., *Jamie Doski*, *supra* note 123; *Victim 138*, *supra* note 144; *Bayle Pickel*, *supra* note 145.

²⁸¹ See *supra* Section IV.B.

²⁸² See *Abrams*, *supra* note 23.

²⁸³ *Id.* at 777–84.

²⁸⁴ MILLER, *supra* note 58, at 211 (“I was surrounded by survivors, I was part of a we.”).

effects. The victims used words associated with physical harms, such as “pain,” “wound,” “scar,” and “hurt,” but these terms were often metaphorical descriptions of the lasting psychological harm resulting from a profound betrayal of trust. The VIS statute seeks information about the physical, psychological, emotional, and property harms that victims suffer.²⁸⁵ Yet, the line between physical, psychological, and emotional harm appears entirely indistinguishable for victims.

The ways in which the VIS continue to personalize “Larry” and speak directly to him reveal that, in many ways, this conduct—systemic institutional sexual assault—might be understood as having a stronger familial undertone to it than is currently attributed. The elite gymnastics community described by the victims was extraordinarily close-knit. The victims describe delicately checking in with each other about Nassar’s behavior, but ultimately trusting his methods and revering his expertise. He held an amalgam role as a doctor and also as a trusted friend. The level of betrayal and breach of trust that they describe requires cultural support, institutional norms, and insularity to thrive.

This analysis compels further research into institutional sexual assault. Systemic sexual assault in other insular institutional settings, such as the United States military, prison and detention facilities, and other camps, athletic programs,²⁸⁶ or schools, may need more thoughtful theoretical and policy frames to address and prevent institutional violence.²⁸⁷

Early feminist successes involved consciousness-raising that positioned rape as a product of a patriarchal society that demanded a state response.²⁸⁸ These feminists succeeded in moving rape and sexual assault from its existing framework as an exclusively private and individual act to a matter of political and public

²⁸⁵ MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

²⁸⁶ See, e.g., Emily Alford, *Sexual Assault Under the Guise of ‘Adjustments’ Is Rampant in the Yoga World*, JEZEBEL (Nov. 8, 2019, 11:21 AM), <https://jezebel.com/sexual-assault-under-the-guise-of-adjustments-is-rampant-1839717999>.

²⁸⁷ See generally *Tort Answers*, *supra* note 18 (making a case for a new rule to govern criminal respondeat superior).

²⁸⁸ MARY P. KOSS & MARY R. HARVEY, *THE RAPE VICTIM* 120, 123 (2d ed. 1991) (explaining that this framing “provided a societal analysis of rape that galvanized the energies and imaginations of women seeking concrete avenues to social change”); see also SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 396–97 (1975).

importance.²⁸⁹ The #MeToo movement also revealed how many serial offenders had festered in various institutional settings for decades, protected by larger power structures.²⁹⁰ Filmmaker James Toback had 38 accusers,²⁹¹ Harvey Weinstein had more than 80,²⁹² and many other serial sexual offenders had multiple accusers come forward.²⁹³ These examples pose the question: is a similar political revolution necessary to provide stronger protection mechanisms against systemic sexual misconduct?

B. *VIS Offer a Portal into the Needs of Rape and Sexual Assault Victims*

This analysis also reveals how important VIS can be as a policy tool in understanding the ongoing needs of survivors because VIS are accessible to the public. Communities invest greatly in victim support services, such as rape crisis centers and courtroom victim advocates. For victims, most of these existing programs function squarely within the pre-trial and trial phases, as they seek to preserve evidence and help victims through the legal process.²⁹⁴

Very few programs, however, focus on supporting victims *after* the case is over. The VIS studied in this Article reveal just how enduring the harms are. They reveal

²⁸⁹ See Ellen Kaye Scott, *How to Stop the Rapists? A Question of Strategy in Two Rape Crisis Centers*, 40 SOCIETAL PROBS. 343, 347 (1993).

²⁹⁰ See Jessica A. Clarke, *The Rules of #MeToo*, 2019 U. CHI. L.F. 37 (2019) (describing the ad hoc processes that have governed #MeToo to provide procedural justice informally).

²⁹¹ *Id.* at 46.

²⁹² Sara M. Moniuszko & Cara Kelly, *Harvey Weinstein Scandal: A Complete List of the 87 Accusers*, USA TODAY (Oct. 27, 2017, 11:27 AM), <https://www.usatoday.com/story/life/people/2017/10/27/weinstein-scandal-complete-list-accusers/804663001/>.

²⁹³ See Clarke, *supra* note 290 (examples throughout).

²⁹⁴ Communities across the country have various programs and services for victims. An interactive national directory of organizations can be found on the National Sexual Violence Resource Center Website. *Directory of Organizations*, NAT'L SEXUAL VIOLENCE RES. CTR., https://www.nsvrc.org/organizations?field_organizations_target_id=10&field_states_territories_target_id=All (last visited Nov. 6, 2020). The state of Michigan too has a directory for crime victims to find these types of services locally. *Directory of Prosecutors and Victim Service Agencies by County*, MICH. DEP'T OF HEALTH & HUMAN SERVS., https://www.michigan.gov/mdhhs/0,5885,7-339-71548_54783_54853_54856-277574--,00.html (last visited Nov. 6, 2020). Many of the organizations and programs have advocacy services available for victims. See, e.g., *Services*, WOMEN'S INFO. SERV., INC., <https://wiseagainstviolence.org/services/> (last visited Nov. 6, 2020); *Victim Services: We Can Help*, EQUAL. MICH., <https://equalitymi.org/victim-services/> (last visited Nov. 6, 2020); *Legal Advocacy*, TURNING POINT, <https://turningpointmacomb.org/get-help/legal-help/> (last visited Nov. 6, 2020).

a need to dramatically expand our cultural consciousness of sexual assault and abuse. VIS present a portal to develop stronger policies and programs to meet the needs of survivors by understanding their conceptualization of harms and by thinking outside the confines of the criminal justice system.

We learn by objectively and systematically studying the language of survivors as they describe the wrongs and harms that they experience. We identify disconnects between the language of law and the language of survivors. This disconnect reminds us to audit and assess our reporting programs and accountability frameworks to ensure that the real language of survivors will be heard and understood as it was experienced, even when lacking the legal packaging.²⁹⁵ These takeaways also feed into a separate feminist dialogue that critiques carceral approaches to feminist reforms.²⁹⁶ Feminist critiques of rape and gendered violence are part of a larger resistance movement to patriarchal structures.²⁹⁷ While criminal justice responses invoke the state and ensure that the state responds equally to crimes against women, these approaches do not address many of the harms suffered and leave many complicit entities unaccountable.²⁹⁸

This analysis reminds us that narrow scripts and narratives still shape our understanding of abuse and abusers. Criminal justice approaches confine survivors to fit into narrow, categorical boxes of stereotypical victims.²⁹⁹ We continue to episodically re-write these scripts to capture discreet examples as they arise,³⁰⁰ but we do not rewrite the script entirely in a way that questions people and institutions

²⁹⁵ See MILLER, *supra* note 58, at 297 (describing how Stanford should have responded to Brock Turner's act of sexual assault).

²⁹⁶ See, e.g., Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 752 (2007).

²⁹⁷ *Id.*

²⁹⁸ See, e.g., Aya Gruber, *A "Neo-Feminist" Assessment of Rape and Domestic Violence Law Reform*, 15 J. GENDER RACE & JUST. 583, 611–12 ("Feminist law reform thus became essentially another facet of the criminal justice system's program of jailing bad guys with little regard to the social, economic, cultural, and racial complexity of crime. As such, the criminal system absorbs women victims into its punitive mission while largely ignoring their material needs, and it reinforces the social structures that made the women vulnerable to violence in the first place.").

²⁹⁹ See, e.g., Anibal Rosario Lebrón, *Evidence's #MeToo Moment*, 74 UNIV. MIAMI L. REV. 1 (2020); Regina Schullera et al., *Judgments of Sexual Assault: The Impact of Complainant Emotional Demeanor, Gender, and Victim Stereotypes*, 13 NEW CRIM. L. REV. 759 (2010).

³⁰⁰ See, e.g., Mayo Moran, *Cardinal Sins: How the Catholic Church Sexual Abuse Crisis Changed Private Law*, 21 GEO. J. GENDER & L. 95 (2019) (detailing how the Catholic Church's handling of child sexual abuse cases reshaped understandings of institutional liability); FRAWLEY-O'DEA, *supra* note 151.

in positions of trust, respect, and power. This analysis reveals how perpetrators in each case are shielded by interconnected power structures that are seldom held accountable or reformed. Victim advocates must also enrich and deepen our understanding of victims' experiences, victim healing, comprehensive accountability, and institutional and cultural reforms.³⁰¹

C. *Absence of Prevention Programs*

The Nassar case VIS revealed how victims found peace and comfort by coming forward and speaking up to protect future victims. These goals were certainly actualized for future victims of Nassar's conduct, but has anything changed legally, culturally, or societally that would prevent a *future* Larry Nassar from behaving similarly?

The VIS in its statutory mandate is narrowly focused on seeking sentencing input for *this* perpetrator.³⁰² Because Nassar had already been sentenced in a separate matter, however, the questions of *whether* he would be imprisoned or *how much* time he would serve were not within the purview of the VIS. Rather, the women heavily emphasized how other institutions, individuals, and power structures needed to also be held accountable. If anything, Title IX was rolled back dramatically after the Trump administration came into power in 2016,³⁰³ suggesting setbacks in university accountability. Further reforms are needed to address systemic institutional abuses outside of the criminal justice system.

VI. CONCLUSION

This Article uses corpus-based discourse analysis to examine this impactful collection of VIS for their larger lessons in law, policy, and society. This analysis reveals several takeaways for further analysis and examination. It reveals the challenges that rape, sexual assault, and abuse survivors face in naming the crime and describing the harms. These challenges are particularly fraught and complex when powerful systems and institutions allow abusers to flourish, resulting in systemic and interconnected betrayals and failures. The VIS call for better platforms for survivors to heal, to speak, and to voice their harms beyond these episodic and rare moments offered by the #MeToo Movement, or, as in the Nassar case, made available due to the specific facts and judicial management of a case. The VIS reveal

³⁰¹ See Gruber, *supra* note 298, at 612 ("Unfortunately, a collateral harm of the domestic violence and rape reform campaigns is that criminalization efforts diverted an enormous amount of feminist academic and political capital away from distributive and dialectic efforts that could help secure the well-being, not just of women victims, but of all women.").

³⁰² See MICH. COMP. LAWS ANN. § 780.763(3)(a)–(d) (West 2020).

³⁰³ 34 C.F.R. § 106 (2019).

that, while Nassar has been held accountable, the larger limits of language, law, and accountability ensure that future cases will surface, absent better preventative policies. These VIS broadly call for powerful law and policy reformation that will hold perpetrators and their enablers accountable and meet the full range of victims' needs outside of the criminal justice system.